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Municipal, County, District, and Local Authority

PROCUREMENT

Of Supplies, Services and Real Property

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Legal Requirements
Recommended Practices
Sources of Assistance

Published by: William Francis Galvin, Secretary of the Commonwealth

Commonwealth of Massachusetts
Office of the Inspector General

Robert A. Cerasoli
Inspector General

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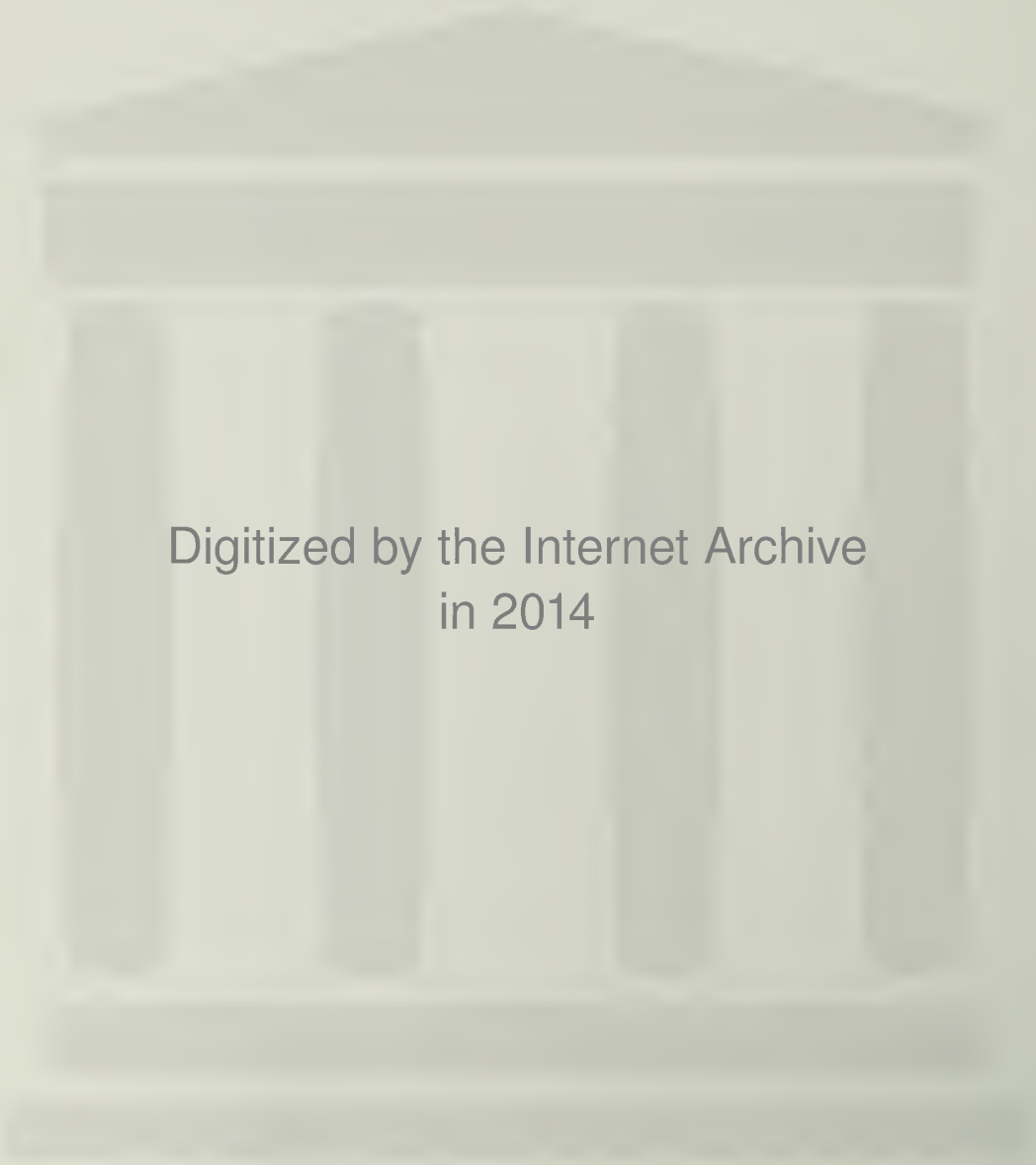
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Office of the Inspector General

Robert A. Cerasoli
Inspector General

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May 1995

Dear Public Official:

I am pleased to present my Office's 1995 Chapter 30B procurement manual. This manual updates the information provided in the original 1990 procurement manual issued by this Office. In addition to incorporating legislative changes to Chapter 30B enacted in recent years, this updated version reflects four years' experience under the law. We have added examples from local governments across the state, answers to frequently asked questions, additional sample forms, and other new features to assist you. I am providing every Chapter 30B jurisdiction with a copy of the manual at no charge. Additional copies are available from the State House Book Store at a nominal price.

My Office is committed to providing you with the information and assistance you need to comply with Chapter 30B and to benefit from the competitive forces of the private marketplace. The first two issues of my Office's *Procurement Bulletin*, a quarterly Chapter 30B newsletter, have received overwhelmingly positive responses from procurement officials. My Office also offers periodic Chapter 30B training seminars in various locations across the state. I welcome your suggestions on how I and my staff can better serve the needs of the local procurement community.

Sincerely,

Robert A. Cerasoli

Robert A. Cerasoli
Inspector General

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CHAPTER 1
INTRODUCTION

Chapter 30B of the Massachusetts General Laws, the Uniform Procurement Act, establishes uniform procedures for local governments to use when contracting for supplies, equipment, services, and real property. Approximately 1,500 local governmental jurisdictions in Massachusetts (cities, towns, counties, districts, regional school districts, and local authorities, including housing and redevelopment authorities) follow the procedures to award contracts worth billions of dollars each year.

The law resulted from collaboration among the Office of the Inspector General, the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, and the City Solicitors and Town Counsel Association, and other local officials to adapt the American Bar Association's Model Procurement Code to reflect specific Massachusetts practice and case law. Chapter 30B updated provisions of the prior law. For example, it increased to $10,000 the threshold at which formal advertising of supply contracts is required (previously the threshold had been set at $2,000 or $4,000), streamlined procedures for smaller contracts, and eliminated restrictions on authority to contract and the duration of many contracts. It also provided for competition for service contracts.

The contracting procedures in Chapter 30B are based on three premises:

1. Larger contracts should receive more attention than smaller contracts. Chapter 30B cut the unnecessary red tape surrounding small purchases to enable local governments to devote resources to larger contracts.

2. Fair, robust competition for larger procurements saves money and promotes integrity and public confidence in government.

3. Uniform contracting procedures promote competition and fairness. Chapter 30B clarified and demystified local contracting for vendors competing for contracts and for citizens observing the process.

After its enactment in January 1990, many local governments quickly demonstrated the benefits of the new law by substantially cutting costs and raising revenue using the procedures to award service contracts. Examples of savings and revenues achieved within the first two years of the law's implementation are presented on the next page.

Examples of Savings and Revenues In First Two Years of Using Chapter 30B

Savings

Solid Waste Contracts	
Lynn	$600,000 in first year
Medford	$1.2 million over three years
Everett	$194,000 annually
Nahant	$225,000 over three years
*Insurance Contracts**	
Lynn	$243,000 premium decrease
Medford	$200,000 premium decrease
Lowell	$175,000 premium decrease
Worcester	$67,000 premium decrease
Lawrence	$60,000 premium decrease
Nantucket	$50,000 premium decrease
Miscellaneous Contracts	
Plymouth	$390,000 over three years for special education transportation services
Lynn	$35,000 annually for convalescent home housekeeping services
Greater Lawrence Regional Vocational Technical High School	$138,000 over three years for class rings

Revenues

*Police-Ordered Towing**	
Chelsea	$170,000 annually
Lynn	$200,000 over two years
Everett	$65,000 in first year
Somerville	$40,000 in first year
Golf Course Restaurant Leases	
Brockton	$43,000 over three years
Braintree	$21,000 over three years

* Subsequent amendments have exempted these contracts from the competitive requirements of Chapter 30B. Local governments may opt to follow Chapter 30B procedures to obtain the benefits of competition.

Source: Results reported to the Office by local officials.

Contracts Subject to Chapter 30B

Chapter 30B establishes procedures to follow for most agreements for supplies, equipment and services, dispositions of surplus supplies, and real property acquisitions and dispositions. In general, the law does *not* apply to contracts governed by specific provisions of other statutes, such as the public construction bid laws, the designer selection law, or the law governing takings by eminent domain.

☞ **Who pays is irrelevant to whether a contract is subject to Chapter 30B.** The law applies because there is an agreement between a local government and a vendor. For example, a yearbook contract awarded by a school official falls under the law even though parents or students will pay for the yearbooks.

Supplies and services

Most local government agreements with vendors of supplies and services are subject to Chapter 30B, including agreements to buy, rent, lease, lease-purchase or otherwise acquire supplies or services. "Supplies" are defined in the law as "all property, other than real property, including equipment, materials[1], and printing and further including services incidental to the delivery, conveyance and installation of such property."[2] "Services" are defined as "the furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports."

The definition of services excludes:

- employment agreements, in which the jurisdiction and the individual have the legal relationship of employer and employee;
- collective bargaining agreements; and

---

[1]Contracts over $25,000 for materials used for construction-related work on public works or buildings must be awarded under the construction bid law, M.G.L. c.30, §39M. See Chapter 9 for more information on the construction bid laws.

[2]M.G.L. c.30B, §2.

- grant agreements, which involve grants to individuals or nonprofit entities for the public purpose of support or stimulation, rather than for the procurement of supplies or services for the benefit or use of the jurisdiction.[3]

The law also contains a list of specific exemptions.[4] A complete list of all Chapter 30B exemptions, and the Office of the Inspector General's interpretations of the exemptions, is in Appendix A. In general, these exemptions can be categorized as follows:

- intergovernmental agreements, such as an agreement to procure supplies or services from the federal government, from the Commonwealth, from another city or town, or from another department or unit of the same city or town;

- procurements from vendors under contracts awarded by the Department of Procurement and General Services (the state purchasing agency);[5] and

- agreements to purchase certain services including ambulance services, collection of delinquent taxes or the services of a deputy tax collector, contracts with lawyers, doctors, certified public accountants, or designers, and contracts for advertising required notices.

A brief overview of the procedures used under Chapter 30B to procure supplies and services is presented on the next page.

Surplus supplies

Chapter 30B has procedures for disposing of any supply with a net value of $500 or more. The procedures include solicitations for sealed bids, public auctions, or

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[3]M.G.L. c.30B, §2.

[4]M.G.L. c.30B, §1(b). An exemption does not preclude you from using Chapter 30B procedures, and this Office recommends that you follow the procedures for large contracts for exempted supplies or services.

[5]See Appendix B for information on DPGS contracts.

Supplies and Services:
Overview of Procedures

Chapter 30B establishes three sets of procedures for awarding supply and service contracts depending on the value of the contract.

- **Contracts under $1,000** - Use sound business practices. (M.G.L. c.30B, §4(c).) The law does not require formal competition for these small purchases. We recommend that you periodically solicit price lists or quotations to ensure you are getting favorable prices.

- **Contracts from $1,000 to $10,000** - Seek price quotes from at least three vendors and award the contract to the responsible vendor offering the supply or service needed for the lowest price. (M.G.L c.30B, §4(b).) See Chapter 3 for more information on procuring supplies or services using quotations.

- **Contracts of $10,000 or more** - Conduct a formal advertised competition using sealed bids or proposals. In a bid competition, you award the contract to the qualified bidder who meets your specifications and offers you the lowest price. (M.G.L. c.30B, §5.) In a proposal process, you award the contract to the offeror submitting the most advantageous proposal taking into consideration your specified evaluation criteria as well as price. (M.G.L. c.30B, §6.) See Chapters 4 and 5 for more information on soliciting bids and proposals.

use of an established market.[6] See Chapter 7 for more information on disposing of surplus supplies.

Real property

Chapter 30B contains procedures for entering into agreements with a value of $500 or more to rent, convey, or otherwise dispose of an interest in real property, or to acquire an interest in real property by purchase or rental. The law does not, however,

[6]M.G.L. c.30B, §15.

apply to residential rentals to qualified tenants by a housing or community development authority.[7] See Chapter 8 for more information on real property acquisitions and dispositions.

Construction contracts for $25,000 or less - Optional

Contracts estimated to cost more than $10,000 for construction, maintenance, and repair work on public works or buildings are subject to the state's construction bid laws. Contracts for the purchase of materials used in construction are also subject to these construction bidding laws.[8]

However, for construction projects estimated to cost from $10,000 to $25,000, you have the option to follow either the construction bid laws (M.G.L. c.30, §39M) or the Chapter 30B *bid* process.[9] (You may not use the proposal process for such contracts.) See Chapter 9 for additional information about construction contracting.

The Inspector General's Role

The Office of the Inspector General is charged with preventing and detecting fraud, waste, and abuse in public programs. Whenever possible, we emphasize prevention to avoid problems before they occur.

We also have a specific statutory mandate to enforce compliance with Chapter 30B.[10] We focus much of our compliance effort on preventing problems through training and technical assistance to public officials. This manual reflects that focus. We have also developed a speedy, informal bid protest resolution process which is described in Chapter 10.

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[7]M.G.L. c.30B, §16.

[8]The Fair Labor and Business Practices Division of the Office of the Attorney General is charged with enforcement of the construction bid laws.

[9]M.G.L. c.30, §39M(d)(4).

[10] M.G.L. c.30B, §17.

In addition to this manual, we publish a quarterly newsletter, the *Procurement Bulletin*, with answers to frequently asked questions, articles relating to municipal procurement, and highlights of legislative and other developments of interest to procurement officials. We invite you to send us questions, comments, and articles for coming editions.

Our staff offers training programs periodically in locations around the state to introduce Chapter 30B to new procurement officials and help the seasoned professionals keep up to date. We also accept invitations to address topics of interest at meetings of professional organizations.

Finally, our staff is available to answer technical questions that arise when you undertake a new procurement. See Appendix D for information on contacting us and on other sources for advice and assistance.

About this Manual

Since the enactment of the law, the Office of the Inspector General has provided extensive training and technical assistance to local governments using Chapter 30B's procedures. This manual continues our commitment to assistance.

This manual updates the 1990 version. We have tried to provide an overview of the law and explain its procedures in an easy-to-understand style. The update reflects amendments made to Chapter 30B. We have also undertaken to call upon and share with you lessons drawn from our experiences in assisting local officials throughout the state.

We hope that you will find most of the guidance you need in these pages. What you will not find here, of course, are any specifics about your local government's procurement rules, payment approval procedures, or record-keeping systems. Remember that your procurement process must comply with any special acts, rules, regulations, ordinances, and bylaws applicable to your jurisdiction. Often the best source of advice on such matters is your Chief Procurement Officer or chief financial officer.

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CHAPTER 2
SUPPLY AND SERVICE CONTRACTS: GETTING STARTED

Chapter 30B establishes general procedures for you to follow in awarding supply and service contracts. Your own local government creates the details of your purchasing system. This chapter briefly considers topics relating to your local organization and procedures, and then examines some first steps you will take in preparing any procurement of supplies or services.

Local Organization and Procedures

The details of local purchasing systems are set by local governments. For example, what forms must be used, who has to approve purchases, and who may make purchases are all local decisions. Also, local bylaws or ordinances may establish additional rules governing purchasing.

☞ **Local rules may dictate more rigorous procedures for smaller purchases.** For example, if your local government has a bylaw or ordinance requiring formal advertised competition on contracts over $2,000, you must comply with the local rule. If you have any question about the existence or applicability of local rules, contact your CPO or chief financial officer.

Chief procurement officer. Chapter 30B restricts the use of requests for proposals for supplies or services to local governments that appoint a "Chief Procurement Officer" (CPO) to oversee the procurement of all supplies and services.[11] The CPO is responsible for all activities related to buying, leasing,

☞ **Chapter 30B does not specify who may sign a contract on behalf of a local government.** If you have any question, check with your CPO or local attorney.

[11]The CPO's powers and duties under Chapter 30B do not extend to real property transactions or the disposition of surplus supplies. However, local rules and procedures may assign this responsibility to the CPO.

renting, or otherwise acquiring supplies and services for all departments.[12] This responsibility includes overseeing the solicitation, opening and evaluation of bids and proposals, and the award of contracts. The CPO ensures that contracting practices are carried out in accordance with state laws and local requirements.

Centralization of purchasing under a CPO can result in greater efficiency and effectiveness. For example, your local government can use centralized purchasing to award "blanket contracts" for standard items used by many different departments, such as office supplies. Under a blanket contract, each department can obtain supplies as needed from the vendor, taking advantage of the low prices obtained through bulk purchasing. Moreover, through centralization multiple departments do not need to develop detailed knowledge of purchasing procedures.

CPO delegations of purchasing authority. While appointment of a CPO can result in centralized purchasing, Chapter 30B allows a CPO, once appointed, wide latitude to delegate powers and duties to other officials. A delegation can be very specific and limited to a particular purchase or class of purchases, or it can be more general. Any delegation of the CPO's responsibilities, and any amendment or revocation of a delegation, must be in writing, signed by the CPO, and filed with the Office of the Inspector General. (A delegation form is at Appendix C.) A delegation will remain in effect until amended or revoked by the CPO unless the delegation includes an expiration date.

☞ **It is not necessary to file delegation forms for staff working on procurements under the direction of the CPO or another official to whom authority has been delegated.** The CPO or delegatee retains responsibility for overseeing procurement functions carried out by staff.

☞ **A delegation applies to the position, rather than the person occupying the position.** It is not necessary to file a new delegation form simply because of a staff change.

[12]M.G.L. c.30B, §2.

If your local government has a charter, bylaw, or ordinance governing the exercise of purchasing powers, any delegation of Chapter 30B powers and duties is subject to those provisions.[13] For example, a bylaw which requires that the town manager purchase all supplies would prohibit the transfer of that responsibility through a Chapter 30B delegation.

If you have any questions about your local procurement system, contact your CPO or local attorney.

Contracting for Supplies and Services: First Steps

There are several steps you will take in any contract for supplies or services regardless of the contract amount and the method (quotes, bids, or proposals) you use to award the contract.

Step 1: Determine what you need.

The first step in any procurement is to determine what you need. Often identifying what you need will be simple, as when your inventory of stationery is low and you need to buy the same type of stationery that you have bought in the past. In other cases, a procurement may be unavoidably complex.

Researching the market is often essential, and an ongoing effort to collect market information may be worthwhile. For example:

- Contact people in your position in other jurisdictions or other members of your professional association.
- Determine if prices are temporarily high or low, then adjust your purchase quantities accordingly.

If you are making procurements for other departments, the users should play a central role in determining what they need. They are often in the best position to

[13]M.G.L. c.30B, §19.

know what advances have been made in their field, such as new materials or equipment that may improve their department's productivity.

In some cases your jurisdiction may not have employees with the expertise required to adequately consider alternatives and identify what is necessary to address specific needs. It may be cost-effective to obtain the necessary expertise, even if that means using a paid consultant. It is not prudent, however, to rely on a consultant to define your jurisdiction's needs if that consultant may also obtain the contract to fulfill those needs. The concern here is that the consultant's recommendations will be tailored to favor his or her own company. By the same token, you should not rely on a supplier to determine what supplies or equipment you need.

☞ **Maybe you can buy what you need from an existing contract.** You may be able to save time and money by making your purchase under an existing contract. Examples include:

- *Blanket contracts* issued by your local government for the item you need.
- *Collective purchasing agreements* your local government has with other jurisdictions. Such agreements are authorized under M.G.L. c.7, §22B. The lead jurisdiction must comply with Chapter 30B in awarding the collective purchasing contract.
- *State Purchasing Agent* contracts. Under M.G.L. c.7, §22A, you can use these large volume contracts. See Appendix B for information on using these contracts.

Combine your needs in large volume contracts. As a rule, you will realize savings by purchasing in larger volumes. Vendors may price supplies and services more aggressively when large volumes are involved, and large volumes will often serve to attract greater competition. Volume purchasing also results in administrative efficiencies, since you can concentrate on a few large procurements rather than many small procurements.

☞ **You may combine supplies and services in one procurement.** Sometimes it makes good business sense to do so. For example, when providing food preparation services, you may want to structure the procurement to include the cost of the food itself.

To realize the benefits of volume purchasing, review your purchasing needs over a period of time -- at least for the upcoming fiscal or school year -- and identify the amount of supplies or services you will need. Consider your purchases in prior years and any special or unusual needs that you expect to arise during the period for which you are making the purchase.

> ☞ **Don't split bids!** Bid splitting is causing or conspiring to cause the division of any procurement for the purpose of evading the requirements of the law. For example, if you know you need 15 desks that cost $300 each, for a total of $4,500, you may not buy the desks separately to avoid soliciting three quotes. (M.G.L. c.30B, §11.)

Combine like items or services in one procurement wherever feasible. It is permissible, and may be preferable, to use one solicitation for a large number of different items and specify that each item will be procured from the vendor offering the lowest price for that item. Examples of supplies that can most easily be purchased this way include auto parts, office supplies, and custodial supplies.

Consider collective purchasing agreements with other jurisdictions. State statutes offer you another opportunity for volume purchasing: entering into collective purchasing agreements with other jurisdictions. Under M.G.L. c.7, §22B, two or more jurisdictions may jointly contract with vendors for materials, supplies, equipment, or services. Typically, one of the jurisdictions will assume the lead role in making the procurement, acting as the purchasing agent for the group. The contract must be procured under the requirements of Chapter 30B, and each jurisdiction must accept sole responsibility for any payment due the vendor for its share of the purchase. Collective purchasing agreements can save you time and money.

Step 2: Write a purchase description.

Once you have determined what you need, you must describe your needs to vendors in sufficient detail to ensure that you receive responsive quotes, bids, or proposals that can be priced and compared in a fair manner. The term used in

Chapter 30B for your presentation of what you want to buy is the "purchase description." A sufficient purchase description for some items, such as office supplies, may require only a few words for each item. For more complex procurements, the purchase description will include more detailed "specifications" -- that is, particulars regarding size, dimensions, quality, performance, warranties, installation, and terms. A purchase description may also include a "scope of services" detailing specific services, including the "work products" or "deliverables" to be produced under the contract.

Effort spent at the outset on a clear purchase description is a good investment. An inadequate purchase description renders effective competition impossible. Would-be vendors will not know what you are seeking and will be unable to offer a reliable price. Vague purchase descriptions often result in vendor protests and cancelled procurements. If you do award a contract using a vague purchase description, you may pay for supplies or services you do not need, and you are likely to have disputes with the contractor over what the contract does or does not require.

Preparation of the purchase description is often the most difficult -- and most important -- step of any procurement. Don't reinvent the wheel: borrow freely from the experience of others. It is highly unlikely that you are the first to procure the supply or service you are trying to describe. Call your

☞ **Use purchase descriptions from other jurisdictions and alter them to meet your needs.** When you do, ask where they got the purchase description and whether it resulted in strong competition. We have seen numerous cases where communities share a purchase description that originated with, and therefore favored, one vendor. Be careful not to use one if it would unfairly advantage a single vendor.

☞ **Be careful about using vendors' specifications when drafting your purchase description.** It is always a good idea to find out what vendors offer, but don't rely on a single vendor's specifications. If you're not careful, you may end up giving one vendor an unfair advantage or giving the appearance of favoritism.

colleagues in other jurisdictions, the Department of Procurement and General Services, or national organizations such as the National Institute of Government Purchasing. (See Appendix D of this manual for more information on sources of advice and assistance.) Find purchase descriptions that others have used successfully and adapt these to your needs. If you are writing a purchase description from scratch for a frequently used supply or service, you are making your first mistake.

If you experience difficulty in preparing a purchase description for a given procurement, it may be that you have not adequately defined your needs and you will have to return to that step before you can proceed.

Typical components of a purchase description are discussed below:

- *Description of the supplies or services required.* List and describe each supply or service in sufficient detail for all vendors to understand what you need. If you have samples, drawings, or other documents, either append them to the purchase description or incorporate them by reference and tell vendors where they may obtain or review them. When purchasing a service, clearly specify the service or services vendors will be required to perform and the documents, reports, and materials they must deliver. Remember, if you fail to include something you want in the purchase description, the contract will not require a vendor to supply it.

  Do not present your needs as a problem and ask vendors to suggest solutions. That approach would, in effect, let vendors write their own purchase descriptions. Massachusetts courts have ruled that "problem-oriented" or "open-ended" IFBs or RFPs do not meet the legal standard for open and fair competition.[14] It is the jurisdiction's responsibility to define what it needs with as much specificity as possible so that vendors are offering supplies, services, and prices on a clearly defined -- and level -- playing field.

- *Quantities required.* Indicate the quantity of each supply or service you need, and whether the quantity shown is the actual amount or an estimate. Vendors need this information to judge whether they can handle the contract and to submit accurate prices. If you use an estimate, make it as realistic

[14] Datatrol v. State Purchasing Agent, 379 Mass. 679 (1980).

as you can, because under Chapter 30B you may not increase the quantity of supplies or services called for in a contract by more than 10 percent.[15]

- *Schedule for Performance.* Specify when you require each supply or service. For example, will all supplies be delivered at once, or within three days of any properly executed order during the term of the contract? On what date must the supplier commence deliveries, and on what date must they actually be received? What are the due dates of the deliverables from the consultant? How frequently must a recurring service be performed? The exact schedule or an approximate schedule, with a statement that it is subject to minor adjustment, should be included in the purchase description.

> ☞ **You may hold a bidders' or proposers' conference to supplement the purchase description.** A conference may be necessary if, for example, vendors must examine a particular piece of equipment. However, a sufficiently detailed purchase description will usually make a conference unnecessary. If you do plan one, include notice of the meeting in the purchase description. We recommend that you keep minutes of the meeting, noting all comments made, questions asked, and answers given, and distribute the minutes to all vendors in time for them to prepare their submittal.

- *Delivery terms.* Specify the delivery terms. Must the supplier deliver the supplies or will you pick them up? Where must the supplies be delivered? To whom must services be provided? At what location in your jurisdiction must a service be performed?

[15]M.G.L. c.30B, §13.

Proprietary Specifications

Avoid proprietary specifications wherever possible. Proprietary specifications cite specific brand names or have the effect of restricting the procurement to one source. You may use proprietary specifications only if "no other manner of description suffices," and then you must provide a written justification for your decision. (M.G.L. c.30B, §14.)

In rare instances you may not be able to avoid using proprietary specifications. For example, if one vendor owns the source code for the software your jurisdiction uses, you must contract with that vendor for software maintenance. (If your software maintenance agreement costs less than $10,000, you may make a sole-source procurement. Otherwise, you will have to advertise a proprietary IFB, and the software vendor will have to submit a bid in response. See Chapter 6 for more information on sole-source procurements.)

Often you can foster competition even when you use proprietary specifications. For example, if you are expanding your computer system to include a new department, you may decide that the new computer stations should be the same brand and model as the existing computer stations due to your need for compatible applications, communication between computer stations, and efficient training of computer users. You may also have maintenance and warranty rights that would be jeopardized if you installed another manufacturer's equipment in your system. In cases such as this, you may specify the brand name of the computer manufacturer. Since several dealers may sell the brand and model of computer equipment you are seeking, you will still be able to obtain competitive quotes, bids, or proposals in response to your proprietary specifications.

Step 3: Prepare contract terms and conditions.

Since you must develop the contract terms and conditions prior to issuing the IFB or RFP, it is best to provide interested vendors with a copy of the contract which the successful bidder or proposer will be required to sign. We recommend that you consult with your attorney to develop standard contract terms and conditions. The amount of detail in the contract will depend, at least in part, upon the size and nature of the procurement. In preparing the contract, you may find the checklist on the next page useful.

Contract Terms and Conditions Checklist

Note: Every contract of $5,000 or more must be signed by the person authorized in your jurisdiction to execute contracts. Consult your attorney if you are unsure about who must sign a contract.

a. Identify the parties to the contract and the responsible parties to receive any notices under the contract.
b. Incorporate by reference the selected vendor's bid or proposal (including for proposals the plan of services, if any).
c. Incorporate by reference the purchase description.
d. Specify the term of the contract including any renewal, extension, or other options. If there are any options, specify that they may be exercised by your jurisdiction at its sole discretion, and how and when the options may be exercised.
e. Identify the payment terms, including when payments will be made, and what documents must be submitted for payment. There are different legal rights and obligations arising from various payment terms. You must specify, for instance, whether you will be lease-purchasing supplies, or whether you will make an outright purchase of the supplies that is funded through periodic payments.
f. If the contract is subject to the state's prevailing wage law, incorporate the wage schedule obtained from the Department of Labor and Industries.
g. Specify that payment is subject to appropriation or other availability of funds (e.g., state or federal grants).
h. Specify remedies for default (e.g., liquidated damages).
i. Specify the contractor's responsibility for providing liability insurance and workers' compensation.
j. Specify the contractor's responsibility for providing bonding (e.g., a payment or performance bond).
k. Specify that all contract amendments must be in writing and signed by officials with authority to bind the jurisdiction.
l. Specify whether the contract may be assigned and who must approve the assignment.
m. Specify what constitutes cause to terminate the contract, what notice must be provided prior to termination, and what opportunity will be granted to correct any problem.
n. Prohibit any activity that would constitute a violation of the conflict of interest statute. (M.G.L. c.268A.)
o. Include a certification of tax compliance by the vendor. (M.G.L. c.62C, §49A.)
p. Specify that the document is the entire contract and that there are no agreements other than those incorporated therein.

Please note that this checklist is not exhaustive; the terms and conditions of any particular contract may differ.

Contract duration. You may -- subject to local ordinances, bylaws, or rules -- enter into a procurement contract for any period of time up to three years, including the term of any renewal, extension, or option. A contract with a term of more than three years, including the term of any renewal, extension, or option, is permissible only if longer contracts have been authorized by a majority vote of the governing body of your jurisdiction before you solicit bids or proposals.[16] The authorization may apply to a single contract in excess of three years, or it may specify time limits for any number or types of contracts.

You may not enter into a multi-year contract unless funds are available for the first fiscal year of the contract. The payment and performance obligations for each succeeding year of a multi-year contract will be subject to appropriation or availability of other funds, such as state or federal grants.[17]

Determine the contract length that would best suit your jurisdiction's needs. As you make this determination, keep in mind that both short-term and long-term contracts involve tradeoffs. For example, a three-year contract term will lock in prices and avoid the need for a separate procurement each year. However, if prices fall, you may end up paying more than you would under a shorter contract. Longer contracts will make sense in some cases. For example, if vendors will incur high start-up costs, a longer contract will allow them to spread the start-up costs over a period of years.

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[16]M.G.L. c.30B, §12. The majority vote required to approve multi-year contracts must be taken by:

- for towns or districts, a duly called town or district meeting;
- for cities, the city council or the city commissioners, with the approval of the mayor if such approval is required under the city charter;
- for counties, the county commission;
- for regional school districts, an affirmative vote by *two-thirds* of the members of the school committee; and
- for a redevelopment, housing, or other authority, the governing body.

[17]M.G.L. c.30B, §12(a).

Contract options for renewal, extension or purchase. When considering the length of the contract, you must also decide whether to provide for any renewal, extension, or purchase options. You may not exercise an extension, renewal, or purchase option unless the option terms were advertised in the original IFB or RFP, and the contract provides your jurisdiction with sole discretion, without the consent of the contractor, to exercise the option.[18]

Before you can exercise any renewal, extension, or purchase option, you must determine whether it is more advantageous to your jurisdiction to exercise the option or to undertake a new procurement.[19] To make this determination, you need to conduct a reasonable investigation of the cost and benefits and to document your findings in writing. A reasonable investigation must establish that the prices you will pay after exercising the option or renewing the contract are reasonable under current market conditions. It may be possible to make such a determination based on a comparison of prices recently obtained through competition by other jurisdictions on similar contracts. Alternatively, you may consider conducting a formal, advertised competition for the term of the extension or renewal. Then, if you receive no better bid or proposal, you can exercise the contract option.

You may not extend or renew any contract subject to Chapter 30B if the original contract solicitation and award did not comply with Chapter 30B requirements. This prohibition applies to all contracts now subject to Chapter 30B, *including* contracts executed before Chapter 30B took effect on May 1, 1990.

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[18]M.G.L. c.30B, §12.

[19]M.G.L. c.30B, §12(e).

Step 4: Estimate the Value of the Contract.

The procedures you use to procure goods and services under Chapter 30B depend on the value of the contract you will award. As noted in Chapter 1, there are three important thresholds:

- For contracts under $1,000, use sound business practices.
- For contracts of $1,000 or more, but under $10,000, seek at least three oral or written quotes from vendors. Chapter 3 provides more information on using quotes.
- For contracts of $10,000 or more, advertise and solicit competitive sealed bids or proposals. Chapters 4 and 5 explain bids and proposals.

Remember that these are minimum thresholds. If your local government has established a lower threshold by charter, ordinance, or bylaw for advertising you must also adhere to that local threshold. If you have any question about the requirements in your jurisdiction, check with either your CPO or your local counsel.

Step 5: Contracts of $10,000 or more: bids or proposals?

If your estimate is $10,000 or more, you must decide whether you want to use an invitation for bids (IFB) or a request for proposals (RFP). Under both processes, award is made to a responsible vendor who is responsive to your IFB or RFP.

The IFB and RFP processes differ in some important ways. Bidding is the basic method for procuring contracts for supplies and services of $10,000 or more, and tends to be more efficient than using an RFP. Generally, award is made to the vendor who meets all your criteria and offers you the lowest price.

The RFP process permits you to weigh the relative merits of proposals

☞ **The contract price, not your estimate, determines the procedures you must follow.** You may not enter into a contract unless you have used the appropriate procedures for the amount of the contract. For example, if you estimated the value of a contract at $9,000, and the best quote you receive is a price of $11,000, you may not execute a contract without following the competitive sealed bid or proposal process for contracts of $10,000 or more.

submitted by competing offerors. You award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike bidding, the RFP process may not always result in selection of the qualified proposer offering the lowest price. Only jurisdictions who have appointed a CPO may make procurements using RFPs, and then only when the CPO, or someone with delegated authority, determines in writing that "selection of the most advantageous offer requires comparative judgements of factors in addition to price."[20]

This Office recommends that you seriously consider bidding most of your procurements, including service contracts. The key to successful bidding is to define the minimum criteria so that you would truly be satisfied with anyone who meets them. For many services, the bid process can work well if you think through the minimum requirements that the contractor must meet to be qualified.

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[20]M.G.L. c.30B, §6(a).

CHAPTER 3
SUPPLY AND SERVICE CONTRACTS BETWEEN $1,000 AND $10,000

You may award a contract for supplies or services valued between $1,000 and $10,000 to the lowest of three written or oral quotations. The Chapter 30B procedures for obtaining quotations are flexible, straightforward, and well-suited to making small purchases rapidly without getting bogged down in paperwork.

Step 1: Develop a purchase description

In order to describe to vendors the supply or service for which you want them to provide a quote, you will need a purchase description. In most cases, developing a purchase description for small procurements is fairly simple. For example, you could seek quotes for pencils based on the following purchase description: "One thousand number 2 pencils, with erasers, delivered to Town Hall on January 2." However, if you were to procure sophisticated equipment or professional services, a more detailed purchase description would likely be necessary.

There is no explicit requirement that you actually write a purchase description, but in many cases you will need one as a practical matter to make sure you adequately describe what you need to each vendor you contact for a quotation. You can then read it over the telephone or fax it to three vendors. Whether or not the purchase description is in writing, you must ensure that each vendor provides quotations based on the same purchase description.

Step 2: Seek three quotes

Procurements in the amount of $1,000 to $10,000 may be made by seeking prices from at least three vendors, either in writing or over the telephone. As stated above, all three vendors' quotations must be based on the same purchase description. You must seek quotes from vendors you reasonably expect to sell the supplies or services you need.

> ☞ **You can use current catalog and sale brochure prices as quotations.** This approach can be time-saving when purchasing supplies.

Record the following information:

- the names and addresses of all persons you contacted for quotes.
- the names of all persons who submitted quotes and the date and amount of each quote.

Chapter 30B requires you to *seek* three quotes; it does not require you to *obtain* three quotes. If, after making a reasonable effort, you cannot get three vendors to quote you a price on the supply or service you need, you may award the contract. However, you should consider broadening your search and contacting a few more vendors to make sure that you are getting a competitive price.

☞ **You can award a sole-source contract up to $10,000 if a reasonable investigation indicates that there is only one practicable source for the supply or service.** (See M.G.L. c.30B, §7.) In this case, you need not seek other quotes, but you must record:

a. the contractor's name;
b. the contract amount and type;
c. the supplies or services procured; and
d. the basis for your determination that only one practicable source exists.

Step 3: Determine the lowest quote and award the contract

After obtaining quotes, you have to identify the lowest priced offer from a responsible vendor offering the quality of supply or service you need. A responsible vendor is one who has the ability, capacity, and integrity to perform under the contract. Award the contract to the responsible vendor offering the lowest quote. Remember that all contracts of $5,000 or more must be in writing.[21] (For more information on written contracts, see Chapter 2.)

☞ **You may negotiate prices with offerors, but you must treat all responsible offerors fairly.** Since there are no sealed bids, you can negotiate prices, but you must give each responsible vendor an opportunity to negotiate. Be very careful not to show any favoritism toward any vendor.

[21] M.G.L. c.30B, §17(a).

Step 4: Retain records

All written documents required under Chapter 30B must be maintained for a period of six years from the date of final payment under the contract. These records include the following for procurements of supplies or services from $1,000 to $10,000:

- the purchase description.
- the names and addresses of all persons from whom quotations were sought.
- the date and amount of each quotation.
- the executed contract and any amendments to the contract if the contract is for $5,000 or more.

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CHAPTER 4
SUPPLY AND SERVICE CONTRACTS $10,000 OR MORE: BIDS

You will use bidding to award a supply or service contract to the responsive and responsible bidder who offers you the best price. Under Chapter 30B, you must use competitive sealed **bids** to procure supplies and services with a value of $10,000 or more unless your jurisdiction has appointed a Chief Procurement Officer (CPO) and the CPO -- or an individual to whom the CPO has delegated powers and duties -- has determined that competitive sealed **proposals** should be used.

Chapter 2 reviewed the first steps involved in bidding supplies and services: determining what you need, writing a purchase description (specification, scope of services), developing contract terms and conditions, and estimating the value of the contract. You may want to review that information before proceeding into this chapter, which reviews the specific steps involved in soliciting competitive sealed bids.

☞ **If your local government has a CPO, only your CPO or anyone with delegated authority from the CPO may solicit bids.** (Chapter 2 has more information on CPOs and delegations.) If you have no CPO, anyone authorized by statute, charter or bylaw, anyone with duly delegated authority, and any member of a board, committee, commission, or other body with procurement responsibilities may solicit bids. If you have questions, check with your CPO (if you have one) or local attorney.

Step 1: Prepare the invitation for bids (IFB)

Your invitation for bids provides vendors with the information necessary to prepare and submit a responsive bid. An IFB consists of the following major components:

- bid submission requirements.
- purchase description (specification, scope of services).
- evaluation criteria.
- documents incorporated by reference, if any.
- contract terms and conditions.
- standard forms.

Development of the purchase description and contract terms and conditions are discussed in Chapter 2. The remaining elements of the IFB are discussed below.

Evaluation criteria. Defining the criteria that you will use to evaluate the bids you receive is just as important as describing what you intend to purchase. You are interested in the vendor who offers the best price and meets all the minimum criteria -- criteria that are, in effect, items to which the answers are either "yes" or "no." You are not concerned with whether a bidder is good, better, or best; you are only concerned with which bidder among acceptable bidders offers you the best price. For example, in buying tires, you want to identify which bidder meets the minimum standard you specified (perhaps a U.S. Department of Transportation tire rating) in the purchase description, and offers the best price. Similarly, in buying a service, you may want to identify the bidder who has a specified minimum amount of relevant experience, staff, and financial capacity to perform the work, and who offers the best price. (If the degree to which a vendor exceeds minimum requirements is truly important, you should use proposals instead of bids. See Chapter 2 for a comparison of bids and proposals.)

The evaluation criteria for bids are measures of *responsiveness* (whether the bidder agrees to provide the supply or service you specified and whether the bid contains all required documents and forms properly completed), *responsibility* (whether the bidder has the capability, integrity, and reliability to perform under the contract), and *best price*. Often, determining responsiveness, responsibility, and best price will be simple matters, and a statement in the IFB that you will award the contract to the responsive and responsible bidder who offers the best price will be sufficient. In other cases, more evaluation may be required.

The IFB must specify the criteria you will use. For example:

- If you plan to test products offered by bidders, you must specify the standards you will use to determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.
- If you require separate bid prices for a number of items, you must indicate whether you will award one contract to the bidder offering

the lowest aggregate price for all the items, or award a contract to each bidder offering the lowest price for each item.

- If you require bid prices for each year of a multi-year contract, you must specify how you will determine the lowest bid.
- If you plan to check references to ensure that the vendor has the required experience, you must so indicate.

Remember that you will only be able to evaluate the bids you receive against the evaluation criteria that you identify in the IFB.

Documents incorporated by reference. If you incorporate documents by reference into the IFB, you must specify where bidders may obtain these documents.

Standard forms. Chapter 30B requires each bidder to submit a non-collusion form certifying that the bid was made in good faith and without collusion or fraud.[22] It is a good idea to include a copy of the form in your IFB to ensure compliance with this requirement. A sample non-collusion form is included in Appendix C.

Typically, bidders also are required to complete other standard forms. In bidding a number of supply items, for example, you should provide a standard bid form listing each bid item and the quantity you require, leaving a space for the bidder to insert a unit price and total price for each item. These standard forms must be included in the IFB document.

Bid submission requirements. The IFB must specify when (date and time) and where sealed bids must be delivered, and the maximum amount of time you reserve to award a contract. You should also provide instructions on how to mark bid packages and how to correct, modify, or withdraw bids. Any other relevant requirements should also be included: for example, specify that each bidder must submit the non-collusion form.[23]

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[22]M.G.L. c.30B, §10.

[23]The Massachusetts Appeals Court ruled in one case that a bidder's failure to include the non-collusion form did not require rejection of the bid if the bidder submitted the form before the contract was awarded.

Step 2: Provide public notice of the IFB

You must give public notice of an IFB a "reasonable time prior to the date of the opening of bids."[24] The notice must be published at least two weeks before bids are due. Otherwise, what is "reasonable" depends on the nature of the bid. The more complex a bid, or the more items included in the bid, the more time vendors may need to compile their bids. Availability of qualified vendors may also affect the bidding schedule. If you will need to search for and encourage qualified vendors to bid, you may need to allow extra time.

The public notice must contain the following information:

- a statement of where, when, and for how long the IFB may be obtained;
- a description of the supply or service to be procured (e.g., a summary of the detailed purchase description included in the IFB);
- a notice that your jurisdiction reserves the right to reject any or all bids; and
- an identification of any board, committee, commission or other body which must approve the contract.

You may include other information in the notice. For example, if you have decided to charge a fee for copies of the IFB, indicate the amount of the fee and the form in which it may be paid.

☞ **Weigh the pressure to award a contract quickly against the need to maximize competition.** Shorter periods of time may favor a vendor who has held the contract in the past, or simply eliminate potential competitors who may be able to offer better prices.

You must post the notice in a conspicuous place in or near your local government's offices until the time specified in the IFB for receipt of bids (a minimum of two weeks). If your local government has an official bulletin board, that is where the notice should be posted.

You must publish the notice at least once, not less than two weeks prior to the time specified for the receipt of bids, in at least one newspaper of general circulation

[24]M.G.L. c.30B, §5(c).

within the area served by your jurisdiction.[25] You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may wish to do additional advertising for a major or specialized procurement.

If the contract value will be $100,000 or more, you must also publish a notice in the *Goods and Services Bulletin* published by the Office of the Secretary of State.[26] A form for this purpose is included in Appendix C.

You may contact vendors to let them know about the IFB. If you maintain bidders lists for contracts, you should send a copy of the notice or the IFB to those vendors on the list who might be interested in the particular contract. You may also simply call vendors to encourage bids. However, be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert selected vendors of an upcoming procurement in advance of the public notice.

Step 3: Distribute the IFB

You must make the IFB available on an equal basis to all who request a copy. If you charge vendors a fee for copies of the IFB, you must charge all vendors. If you maintain bidders lists, provide interested vendors on the lists with a copy of the IFB.

Keep a record of all vendors who receive the IFB. If you later issue an addendum to the IFB, send the addendum to all those who have already received the IFB. To avoid misunderstandings or protests, include a requirement on the bid form that vendors acknowledge in writing their receipt of any addenda. Also, if vendors are likely to require additional time to respond to the addendum, extend the bid due date.

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[25]The Secretary of State has granted the city of Boston permission to publish a periodical listing contract opportunities as a substitute for advertising in a newspaper.

[26]You may mail or fax the completed form to the *Goods and Services Bulletin*, Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136. There is no charge for advertising in the *Bulletin*.

Step 4: Receive sealed bids

Be prepared to accept sealed bids after you issue the IFB. Keep a register of bids received, note on the sealed bid package the date and time it was received, and provide the bidders with receipts for the package upon request.

Bids must be unconditional.[27] However, prior to the bid opening, bidders may correct, modify or withdraw their bids by following the instructions you provided in the IFB. A bidder who wishes to withdraw a bid must do so in writing. Any correction or modification to a bid must be submitted in writing. Because the original document must be submitted as a sealed package, the IFB should include a requirement that corrections or modifications also be sealed when submitted.

You may not accept a late bid. If you do receive a late bid, you should note the time of receipt and return the bid package unopened to the bidder, along with an explanation of the reason for rejection.

You may not accept a late correction or modification, either. If you do receive a late correction or modification, you should treat it as a late bid and evaluate only the original bid which was received by the deadline.

Step 5: Open and record bids in public

Bids must be opened in public. Under Chapter 30B, this means that bids must be opened either in a meeting which fulfills the requirements of the state's open meeting law,[28] or in the presence of one or more witnesses.

If the bids are opened in an open meeting, a quorum of the body holding the meeting must be present, and the names of all bidders and the amounts of their bids

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[27]For example: a bidder may not submit a bid subject to your agreement to a change in the purchase description, a bidder may not make a bid price subject to any changes in a price list, and a bidder may not impose any conditions on a bid that were not specified in the IFB.

[28]M.G.L. c.30A, §11A½.

must be entered into the minutes.[29] If the bids are opened in the presence of one or more witnesses, the procurement officer and the designated witness(es) must sign under penalties of perjury a statement listing the names of all bidders and the amounts of their bids, and declaring that the list is a complete and accurate list of the bids opened in your presence.

A bidder may not change the price or any other provision of the bid in a manner prejudicial to the interests of your jurisdiction or fair competition.

A bid may be withdrawn after it has been opened only if a mistake is clearly evident on the face of the document, but the intended correct answer is not evident. For example, if a bidder incorrectly multiplied unit prices by estimated quantities and added the incorrect subtotals to arrive at a total price, the mistake would be evident but the intended bid would not.[30]

Step 6: Evaluate bids

You must evaluate bids using only the criteria identified in the IFB. The evaluation will address the responsiveness of the bid, the responsibility of the bidder, and the price. In many cases, this will require little more than using checklists to confirm that all required information and forms have been submitted, and making direct comparisons of costs.

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[29]If the IFB solicited prices for a series of items, such as office supplies, and you plan to award a separate contract to the lowest bidder for each item, you need not transcribe each bidder's prices for all items onto the signed statement. Instead, you may copy the pages of each bid submission containing the bid prices, attach them to the signed statement, and incorporate them by reference into the signed statement.

[30]Note that in such a case, if the bidder chooses not to withdraw the bid, you have the discretion to either reject the bid as nonresponsive (since the forms were not properly completed) or to accept the bid and evaluate it as you stated you would in the IFB. If you decide to evaluate the bid, you must not change the bid since the intended correct answer is not apparent on the face of the document. Evaluate the lowest of the unit price, multiplied price, or total price.

> ☞ **Evaluate bids efficiently.** It may be wise to first evaluate prices, and then consider the responsiveness and responsibility of the bidder with the apparent best bid. If you find that a bidder fails the full evaluation, go on to evaluate the next apparent best bidder. Conversely, if price evaluations may be time-consuming, look first at the responsiveness and responsibility of all bidders, and then perform price evaluations only for the responsive and responsible bidders.

In determining the responsiveness of a bid, you must waive minor informalities or allow the bidder to correct them. According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the bid . . . which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."[31] For example, the omission of a unit price figure is a minor deviation which must be waived when the intended figure is readily ascertainable from other figures in the bid.

You must correct a bid if a mistake and the intended bid are clearly evident on the face of the bid document. For example, a bidder might mistakenly insert the same figure ($1,000) both as a unit price per square yard of carpeting and as a total price for 100 square yards of carpeting. One of the figures is mistaken, and it is evident in this example that the unit price should be $10. In such a case, you must make the correction and notify the bidder in writing; the bidder must not be permitted to withdraw. Other than to make such a correction, you may not correct or change a bid.

Step 7: Award the contract

You must award the contract to the responsive and responsible bidder who offers you the best price for the supply or service. Where the contract will require your jurisdiction to pay the contractor, the best price is the lowest price. Where the contract will require the contractor to pay your jurisdiction, the best price is the highest price.

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[31] M.G.L. c.30B, §2.

Written notice of the award decision must be given to the selected bidder within the time for acceptance you specified in the IFB. The time for acceptance may be extended with agreement of the parties.

If your jurisdiction has a CPO, the CPO or someone delegated by the CPO should sign all contracts. However, the CPO's signature is not sufficient if other officials' signatures are required by state or local law to approve contracts. For example, the award of a contract may be subject to the approval of the mayor, the city council, the board of selectmen, or the school committee. If you are uncertain, check with your attorney.

You are not required to award a contract. You may cancel the IFB at any time until the bids are opened. Once bids are opened, you may reject all the bids if you determine that such action is in the best interest of your jurisdiction. For example, it is in the best interest of your jurisdiction to reject all bids if the lowest price exceeds your budget, or if your purchase description was inadequate or inaccurate. Of course, you may not reject all bids simply because a favored bidder did not submit the lowest bid. You must state in writing the reason for any cancellation or rejection.

☞ **If the successful bidder refuses to execute the contract:** You may award the contract to the responsive and responsible bidder who offered you the next best price. Discuss with your local attorney what action should be taken against the recalcitrant bidder. If the bidder posted a bid bond, consider attempting to collect against the bond.

Step 8: Execute the contract

After you notify the successful bidder of the award, execute a written contract containing all the terms and conditions stated in the IFB.

If you are unsure about who has the authority to sign the contract, consult with your local attorney.

Step 9: Retain records of the IFB process

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final payment under a contract. These documents include the following:

- the invitation for bids, including any amendments;
- the justification (if any) for use of proprietary specifications;
- the public notice and advertisement;
- the *Goods and Services Bulletin* notice if the contract is for $100,000 or more;
- the record of the bid opening (either the minutes of the open meeting, the signed statement of the procurement officer and witnesses, or a certified copy of the minutes or signed statement);
- all bids received, including the certified statement of each bidder that the bid was made in good faith;
- any bid corrections, modifications, withdrawals, and notices of bid corrections, modifications, or withdrawals;
- any notices of bid rejections or cancellation;
- the notice of award; and
- the executed contract.

The contents of the bid file must be open to public inspection.[32]

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[32]M.G.L. c.30B, §3.

CHAPTER 5
SUPPLY AND SERVICE CONTRACTS $10,000 OR MORE: PROPOSALS

Bidding is the basic method under Chapter 30B for procuring supply and service contracts of $10,000 or more. However, when it is in your local government's best interest to do so, you may instead use the request for proposals (RFP) process to award such contracts.[33] The RFP process permits you to weigh the relative merits of proposals submitted by competing offerors. You award the contract to the offeror submitting the most advantageous proposal, taking into consideration the proposals' relative merits and prices. Unlike the bidding process, the RFP process may not always result in selection of the qualified proposer offering the lowest price. While service contracts may seem at first glance to be most suited to the RFP process, many service contracts can and should be bid. See Chapter 2 of this manual for more information on deciding between bids or proposals.

Chapter 2 reviewed the first steps involved in procuring supplies and services: determining what you need, writing a purchase description (specification, scope of services), developing contract terms and conditions, and estimating the value of the contract. You may want to review that information before proceeding into this chapter, which reviews the specific steps involved in soliciting competitive sealed proposals.

☞ **You can only use RFPs if your local government has appointed a Chief Procurement Officer (CPO).** Only your CPO or someone with delegated authority from the CPO may solicit proposals. (Chapter 2 has more information on CPOs and delegations.) If you have questions, check with your CPO (if you have one) or local attorney.

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[33]The exceptions are school bus transportation contracts and construction contracts. Under M.G.L. c.71, §7A, you must bid school bus transportation contracts. Construction contracts must be bid as required by M.G.L. c.30, §39M.

Step 1: Document your decision to use the RFP process

If you do decide that the RFP process is preferable for a given procurement, you must document your decision, along with the reasons for it, in writing. For example, in determining that the RFP process should be used to procure consultant services to assess a city's health coverage requirements, it would not be sufficient to state: "I have determined that the RFP process for this procurement will be most advantageous for the city." Your written rationale must specify the reasons for your determination that your jurisdiction's interests will be served by a process which allows you to select a proposal which exceeds your minimum requirements and does not offer you the lowest price. For example, you might state that "the RFP process will enable the city to provide higher ratings to consultants whose key project personnel have extensive experience providing similar services to other cities and towns."

Step 2: Prepare the RFP

Your RFP contains all of the information proposers will need to prepare a responsive proposal. An RFP consists of the following major components:

- purchase description (specification, scope of services);
- plan of services requirement, if any;
- evaluation criteria
  a. minimum evaluation criteria;
  b. comparative evaluation criteria;
  c. best price;
- documents incorporated by reference, if any;
- contract terms and conditions;
- standard forms; and
- proposal submission requirements.

Chapter 2 provides information on developing a purchase description and contract terms and conditions. The remaining elements of the RFP are discussed below.

Plan of services. When using the RFP process, you have the option of requiring vendors to include a "plan of services" in their proposals. The contents of a

plan of services must be evaluated as part of the proposal evaluation process, and elements of the proposed plan may be negotiated with the proposer.

In essence, the plan of services contains specifics as to *how* the proposer will satisfy the purchase description (scope of services). It is not a substitute for a complete purchase description. Rather, it is a tool you can use to evaluate each proposer's plan for meeting your objectives: Does the proposer offer the right methodology and resources to best meet your needs? In most cases, it will probably be unnecessary to require a plan of services, but you do have the option to do so when you believe it would benefit your jurisdiction.

For instance, if you seek proposals for the management and operation of a municipal facility, you might decide to require each proposer to submit a plan of services containing a detailed organization chart showing the chain of command, written job descriptions for the key personnel who will be assigned to the contract, a description of the automated systems the proposer will use to fulfill reporting and record-keeping functions, and a proposed schedule for major maintenance activities. You will later evaluate the plan and you can negotiate with the proposer for changes in the plan to ensure that your objectives are met under the final contract. The final plan will be incorporated into the contract.

If you do require proposers to submit a plan of services, your RFP must specify the information to be included in the plan. You may also specify a format and set limits on the length.

Evaluation criteria. Defining the criteria that you will use to evaluate the proposals you receive is just as important as describing what you intend to purchase. You want to (1) determine which proposers meet your minimum criteria, (2) compare the advantages each proposal offers relative to your comparative criteria, and (3) compare the prices the proposers offer and determine which is the best price. All the criteria you will use must be included in your RFP; you may not evaluate proposals against any other evaluation criteria. Be careful to ensure that the evaluation criteria in the RFP reflect the full range of standards you want to apply to the proposals you

receive. The advantage of this approach is clear: you maximize the likelihood of receiving responsive proposals, geared to the needs of your jurisdiction. The more information you provide to proposers about the target at which their proposals are aimed, the greater the likelihood that their proposals will be "on target."

a. Minimum evaluation criteria. Minimum evaluation criteria reflect those standards or attributes which you consider essential to satisfactory performance of the contract. You will use the minimum criteria to identify *responsive* proposals (those that offer all of the supplies or services requested in the RFP and contain all of the required information and forms properly completed) and *responsible* proposers (those with the capability, integrity, and reliability to perform under the contract).

Minimum criteria are yes-or-no standards which you will apply to every proposal. Does the proposer meet each minimum criterion? If the answer is yes, the proposal remains under consideration. If the answer is no, the proposal is eliminated from further consideration. If the nature of the work to be performed under the contract demands that the contractor possess a very high level of qualifications and training, then you should set very rigorous minimum criteria. However, if you set a higher standard than you truly need, you will reduce the pool of qualified proposers and, in all likelihood, pay more than you should for the supply or service.

For example, in selecting a consultant to evaluate your jurisdiction's health coverage requirements, you might determine that only consultants who have successfully completed at least three contracts providing health coverage consulting to a private or public client of similar size are qualified to submit proposals. If you include this criterion in the RFP, you must reject all proposals submitted by consultants who do not meet the standard, since, by your own definition, such consultants are not qualified to perform the work. As this example illustrates, it is important that the minimum criteria truly reflect the standards or qualifications necessary to perform the work.

b. Comparative evaluation criteria. At this point in the RFP development process, you have established the minimum criteria to identify the responsive

proposals submitted by responsible proposers. Now you need to define the comparative evaluation criteria to be applied to all proposals that meet your minimum criteria. In effect, comparative evaluation criteria reflect standards or attributes for which you would be willing to spend more money.

Your RFP must identify each comparative criterion you will use; make them as specific as possible and tie them as closely as you can to the tasks contained in the purchase description. Do not use vaguely worded phrases such as "past performance" or "creativity of approach," which provide little guidance either to competitors who submit proposals or to those responsible for evaluating the proposals received. Remember, the more specificity you provide, the more likely you are to receive good proposals offering the supplies or services you want. If you are vague, you will not establish a level field for the competition, and your RFP will be subject to challenge.

For each comparative criterion you must also specify what standard a proposer must meet to achieve a rating of "highly advantageous," "advantageous," "not advantageous," or "unacceptable." You have flexibility in defining the ratings to best meet your evaluation needs, and you need not include all four rating categories in your RFP if you do not need them all. In fact, the fewer categories you use, the easier it will be to develop the RFP and later evaluate proposals. Examples of comparative evaluation criteria ratings are provided on the next page.

☞ **You do not have to use all four rating categories.** You have flexibility to use a rating scheme that makes sense in the context of your RFP. For example, if you merely want to distinguish proposals that offer one particular extra service from those that do not, you could simply use "advantageous" for those that do, and "not advantageous" for those that do not.

☞ **You may not substitute numerical ratings for the qualitative ratings.** Point systems are often deceptive, creating the illusion that qualitative judgments can be compared with mathematical precision. Point differences may actually reflect small, inconsequential differences between proposals.

Comparative Evaluation Criteria Ratings Examples

Example 1: Training. You want to hire a firm to train employees on workplace safety. As one evaluation criterion, you decide to compare the completeness and clarity of training materials developed by each firm that meets your minimum criteria. In effect, you believe that it may be worth paying more for better training materials. You require firms to submit three samples of workbooks or other training aids used in workplace safety management training delivered to public agencies.

Criterion: Clarity and completeness of sample training materials.

Unacceptable: At least two samples are not written clearly or do not fully cover the subject matter, or both.

Not advantageous: One sample is not written clearly or does not fully cover the subject matter, or both.

Advantageous: All three samples are written clearly and fully cover the subject matter.

Highly advantageous: All three samples are written clearly and fully cover the subject matter and excel with respect to use of graphics, formats, and writing style.

Example 2: Computer Software. You are buying municipal finance software. One comparative criterion is ease of staff use, which you will judge based on an on-site demonstration of the system at one municipal installation.

Criterion: Ease of use.

Highly advantageous: Application screens are clear and set up logically. Fields can be accessed easily and quickly. Multiple screens are logically sequenced and can be quickly accessed from other relevant screens. Users with minimal training and experience can quickly learn to navigate the system with training of one-half day or less.

Advantageous: Application screens are generally clear and set up logically. Fields can be accessed easily and quickly. Multiple screens are logically sequenced but must be accessed by going through a series of screens. Users with minimal training and experience are likely to require more than a one-half day training workshop.

Unacceptable: Application screens are unclear and not set up logically.

If you find in developing the evaluation criteria for a specific procurement that you really have no need for comparative criteria -- i.e., you plan to select the best offer from the pool of vendors meeting your proposal submission requirements and minimum criteria -- then the RFP process is inappropriate for the procurement. Instead, you should solicit competitive sealed bids in accordance with the procedures set forth in Chapter 3 of this manual.

c. Best price. The RFP must inform proposers of the method you will use to compare prices and determine the "best" proposal price. For contracts under which your jurisdiction will have to pay the selected vendor, the best price is the lowest price; for contracts under which the selected vendor will have to make a payment to your jurisdiction, the best price is the highest price. In many cases, identifying the best price is straightforward, as when proposers submit a single dollar figure with their proposal. In other cases, however, some calculation may be required.

If you are awarding a multi-year contract, you must specify whether a single price should be proposed for the entire contract term. If not, you must indicate how you will calculate which proposal offers the best price.

Documents incorporated by reference. If you incorporate documents by reference into the RFP, you must specify where proposers may obtain these documents.

Standard forms. Chapter 30B requires each proposer to certify that the proposal was made in good faith and without collusion or fraud.[34] It is a good idea to include a copy of the non-collusion form in your RFP to ensure compliance with this requirement.[35] A sample non-collusion form is included in Appendix C.

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[34]M.G.L. c.30B, §10.

[35]The Massachusetts Appeals Court ruled in one case that a bidder's failure to include the non-collusion form did not require rejection of the bid if the bidder submitted the form before the contract was awarded.

Typically, proposers also are required to complete other standard forms, including a proposal price sheet. Any standard forms must be included in the RFP.

Proposal submission requirements. The RFP must specify when (date and time) and where sealed proposals must be delivered. You must require proposers to submit separate sealed price and non-price (or technical) proposals. Also, you must specify the maximum amount of time you reserve to award a contract. Provide instructions on how to mark proposal packages and how to correct, modify, or withdraw proposals.

Step 3: Provide public notice of the RFP

You must give public notice of an RFP a "reasonable time prior to the date for the opening of [proposals]."[36] The notice must be published at least two weeks before proposals are due. Otherwise, what is "reasonable" depends on the nature of the RFP. The more complex the proposal, or the more items or services included in the proposal, the more time proposers may need to prepare their proposals. Availability of qualified proposers may also affect the RFP schedule. If you will need to search for and encourage proposers, you should allow extra time.

☞ **Weigh the pressure to award a contract quickly against the need to maximize competition**. Shorter periods of time may favor a vendor who has held the contract in the past, or simply eliminate potential competitors.

The public notice must contain the following information:

[36]M.G.L. c.30B, §5(c).

- a statement of where, when, and for how long the RFP may be obtained;
- a description of the supply or service desired (i.e., a summary of the detailed purchase description included in the RFP);
- a notice that your jurisdiction reserves the right to reject any or all proposals; and
- an identification of any board, committee, commission or other body which must approve the contract.

You may include other information in the notice. For example, if you have decided to establish a charge for copies of the RFP, indicate the amount of the charge and the form in which it may be paid.

You must post the notice in a conspicuous place in or near your jurisdiction's offices until the time specified in the RFP for receipt of proposals (a minimum of two weeks). If your jurisdiction has an official bulletin board, that is where the notice should be posted.

You must publish the notice at least once, not less than two weeks prior to the time specified for the receipt of proposals, in at least one newspaper of general circulation within the area served by your jurisdiction.[37] You may, of course, publish the notice in more than one newspaper in your area, in newspapers outside your area, and more than once. You may wish to do additional advertising for a major or specialized procurement.

If the contract value will be $100,000 or more, you must also publish a notice in the *Goods and Services Bulletin* published by the Office of the Secretary of State.[38] A form for this purpose is included in Appendix C.

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[37]The Secretary of State has granted the city of Boston permission to publish a periodical listing contract opportunities as a substitute for advertising in a newspaper.

[38]You may mail or fax the completed form to the *Goods and Services Bulletin*, Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136. There is no charge for advertising in the *Bulletin*.

You may contact vendors to let them know about the RFP. If you maintain vendors lists for contracts, you should send a copy of the notice or the RFP to those vendors on the list who might be interested in the particular contract. You may also simply call vendors to encourage proposals. However, be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert only selected vendors of an upcoming procurement in advance of the public notice.

Step 4: Distribute the RFP

You must make the RFP available on an equal basis to all who request a copy. If you charge vendors a fee for copies of the RFP, you must charge all vendors. If you maintain vendors lists, provide interested vendors on the lists with a copy of the RFP.

Keep a record of all vendors who receive the RFP. If you later issue an addendum to the RFP, send the addendum to all those who have already received the RFP. To avoid misunderstandings or protests, include a requirement in the RFP that vendors acknowledge in writing their receipt of any addenda. Also, if vendors are likely to require additional time to respond to the addendum, extend the proposal due date.

Step 5: Designate the individual(s) responsible for evaluating proposals.

You must select one or more individuals to evaluate the non-price, or technical, proposals. You may, as other jurisdictions have done, use staff of the department that will be using the supplies or services to evaluate proposals. These employees often have the expertise to understand complicated technical proposals. Some jurisdictions ask members of relevant boards to sit on their evaluation committees.[39] You need not

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[39]Avoid using a board or a quorum of a board's members as an evaluation committee. There is a potential for dispute about the conflict between the requirement for open meetings of boards under M.G.L. c.39, §23B, and the requirement to keep non-price proposals confidential until Chapter 30B evaluations are completed and price

limit committee membership to employees of the jurisdiction; for example, you may employ an independent consultant to participate on your evaluation committee.[40]

Step 6: Receive the sealed price and non-price proposals

Be prepared to receive separate, sealed price and non-price proposals after you issue the RFP. You must maintain a register of proposals received. It is good practice to note on the sealed price and non-price proposal packages the date and time they were received, and to provide proposers with receipts for their proposals upon request.

Proposals must be unconditional.[41] However, prior to opening the non-price proposals, a proposer may correct, modify or withdraw the proposal (non-price and price) by following the instructions you provided in the RFP. A proposer who wishes to withdraw a proposal must make the request in writing. Any correction or modification to a proposal must be submitted in writing. Because the original proposals must be submitted as sealed packages, the RFP should require that corrections or modifications also be sealed when submitted.

You may not accept a late proposal. If you do receive a late proposal, you should note the time of receipt and return the proposal unopened to the proposer, along with an explanation of the reason for rejection.

You may not accept a late correction or modification to a proposal. If you do receive a late correction or modification, you should treat it as a late proposal, and evaluate only the original proposal which was received by the deadline.

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proposals are opened.

[40]Remember that the employment of the independent consultant is itself subject to Chapter 30B requirements.

[41]For example, a proposer may not submit a proposal subject to your agreement to a change in the specifications, a proposer may not make a proposal price subject to any changes in a price list, and a proposer may not impose any conditions on a proposal that were not specified in the RFP.

Step 7: Open and register the proposals

You *may not* open the proposals publicly. The proposal contents are to be kept confidential and not disclosed to competing proposers until the evaluation process is completed or until the time for acceptance specified in the RFP, whichever occurs first.

You must separate the price and non-price proposals. The non-price, or technical proposals, must be opened at the time specified in the RFP in the presence of one or more witnesses. At the time of the opening, you must prepare and make available for public inspection a register of proposals which includes the name of each proposer and the number of proposal modifications submitted by each proposer. You should also record the name(s) of the witness(es).

You may open the price proposals immediately after opening the technical proposals or at a later time. However, be sure that you do not disclose the price proposals to the non-price proposal evaluator(s) until they have completed their evaluations. The separation of technical and price proposals is an important element of the RFP process. The process is structured to allow an orderly, fair comparison of the proposals.

Step 8: Evaluate non-price proposals

Proposal evaluations must be based solely on the criteria set forth in the RFP. The non-price proposal evaluator(s) must examine each proposal to determine whether it meets all of the proposal submission requirements and minimum criteria specified in the RFP. Any proposal which fails to comply with the proposal submission requirements or fails to meet any of the minimum criteria for responsiveness and responsibility must be eliminated from the competition.

☞ **Evaluate proposals efficiently.** If you determine that a proposal is nonresponsive, a proposer is not responsible, or the proposal warrants an "unacceptable" rating, you can eliminate that proposal from further consideration. You do not need to take the extra time to evaluate these proposals according to your other criteria.

In determining the responsiveness of a proposal, you must waive minor informalities or allow the proposer to correct them. According to Chapter 30B, minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the [proposal] . . . which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body."[42]

You must correct a proposal if a mistake and the intended offer are clearly evident on the face of the proposal document. In such a case, you must make the correction and notify the proposer in writing; the proposer must not be permitted to withdraw. Other than to make such a correction, you may not correct or change a proposal.

Following the rules you included in the RFP, you must assign a rating for each comparative evaluation criterion in each proposal. Taking each individual comparative criterion rating into consideration, you assign each proposal a composite rating of "highly advantageous," "advantageous," "not advantageous," or "unacceptable."

☞ **You may not arbitrarily "shortlist" proposals.** You are using proposals instead of bids because you determined that it is in the best interest of your jurisdiction to compare proposals on more than price. You must fully evaluate all responsive and responsible proposals and assign each one an overall rating.

Your written proposal evaluations must show the rating assigned for each evaluation criterion, the reasons for each rating, a composite rating of each proposal, and the reasons for the composite rating.[43] Of course, your composite ratings must rationally reflect the underlying ratings for each criterion. For example: a single

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[42]M.G.L. c.30B, §2.

[43]If you wish to recommend that revisions to the proposal's plan for providing the supplies or services be obtained by negotiation prior to awarding a contract to the proposer, such recommended revisions should also be part of the written explanations accompanying the ratings. See Step 11 of this chapter for more information on the negotiation process.

"unacceptable" rating would likely require an overall unacceptable rating; all "advantageous" ratings would not warrant a "highly advantageous" composite rating.

Your written explanation is the place to provide further information on the proposal characteristics to help guide the final selection. Is the proposal vastly superior to all others for this criterion, and therefore worth a substantial cost premium? What attributes of a proposal makes it warrant a "highly advantageous" composite rating? How does it compare to other "highly advantageous" proposals? For example, if the "highly advantageous" proposal is only marginally better than those you rated "advantageous," communicate this judgment to the decision maker.

The more qualitative information you provide in the written explanations accompanying the proposal ratings, the better equipped the decision maker will be to weigh the ratings you have assigned to the non-price proposals against the proposal prices to identify the most advantageous proposal overall.

After proposals have been assigned ratings on the basis of each evaluation criterion, evaluators should assign composite ratings to the proposals. The written explanation accompanying each composite rating must state the reasons for each composite rating.

With one exception, your ratings may not be conditioned on negotiating changes to the proposal. The exception applies if you have required proposers to submit a plan of services. An example of a contract for which you may want to require a plan of services is provided on the next page.

Step 9: Evaluate price proposals

You will evaluate the price proposals following the method you specified in the RFP to determine the best proposal price. The price evaluation can be performed while non-price proposals are being evaluated as long as the prices are not disclosed to the individuals responsible for evaluating the non-price proposals.

Evaluating a Proposer's Plan of Services

A plan of services is a detailed plan describing how the proposer will provide the needed services. For most contracts, you do not need this level of detail and you should not require proposers to submit a plan of services. In general, it makes more sense to spell out the level of service or the deliverables required and to evaluate proposers based on their qualifications and track records, rather than to attempt to evaluate exactly how they propose to get the job done.

For an unusually complex contract, you may want to evaluate the staffing plan, the methodology, or other specific information about how each proposer intends to meet the contract requirements; for such a contract you may require a plan of services. In evaluating a plan of services, you should specify the rating for each criterion on the basis of the plan presented in the proposal; you may also specify what the improved rating would be if specific changes are negotiated.

Example: You have issued an RFP for a contract to manage and operate a municipal golf course. The RFP requires each proposer to submit a plan of services which consists of an organizational chart with the name, position, and resume of each individual who will be employed full-time under the contract with overall responsibility in each of the following areas: financial management, golf pro services, and groundskeeping services.

The RFP specifies the rating scheme for this plan of services with respect to each of the key positions. The rating scheme for the individual identified as having overall responsibility for financial management is as follows:

Criterion: Qualifications and experience in financial management.

> *Unacceptable:* Less than one year in a position of overall financial management responsibility for an operation at least comparable in size and complexity to the golf course or less than an associate's degree in accounting.
>
> *Not advantageous:* One to three years in a position of overall financial management responsibility for an operation at least comparable in size and complexity to the golf course and at least an associate's degree in accounting.
>
> *Advantageous:* Four or more years in a position of overall financial management responsibility for an operation at least comparable in size and complexity to the golf course and at least a bachelor's degree in accounting.

The evaluation committee reviews a proposal that is rated advantageous in all other categories but has proposed a financial manager with only three years' experience. The evaluators may recommend negotiating a change in staffing to replace the individual slated for this position with a more experienced financial manager. In this case, the proposal as submitted would earn a "not advantageous" rating on this criterion, but the evaluators would specify that the rating will change to "advantageous" if the proposer agrees to place an individual with four or more years' experience and at least a bachelor's degree in accounting.

As with non-price proposals, you must waive minor informalities[44] or allow the proposer to correct them. For example, the omission of a unit price figure is a minor deviation which must be waived if the intended figure is readily ascertainable from other figures in the proposal.

You must correct a price proposal if a mistake and the intended offer are clearly evident on the face of the proposal document. In such a case, you must make the correction and notify the proposer in writing; the proposer must not be permitted to withdraw. Other than to make such a correction, you may not correct or change a proposal.

Step 10: Identify the most advantageous proposal

You must identify the most advantageous proposal taking into consideration the proposal evaluations and the proposal prices. The decision may be easy when, for example, the lowest-priced proposal received the highest overall ratings, or all proposals received the same rating and the differences are so insignificant that you decide to go with the lowest-priced.

In other cases, you will have to carefully consider whether it is worthwhile for your jurisdiction to spend more money to contract for a better proposal. For example, if one proposal is rated "highly advantageous" and has a higher price tag than the lowest-priced "advantageous" proposal, you need to determine which proposal best meets the needs of your jurisdiction.[45] The extra benefits afforded by the "highly advantageous" proposal may not be worth the cost premium you would incur by

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[44]Minor informalities are "minor deviations, insignificant mistakes, and matters of form rather than substance of the [proposal] . . . which can be waived or corrected without prejudice to other offerors, potential offerors, or the governmental body." M.G.L. c.30B, §2.

[45]If revisions to a proposal's plan of services would result in its selection as most advantageous, taking into consideration the proposal evaluations and prices, you may select the proposal conditioned upon satisfactory negotiations to incorporate the recommended revisions.

selecting that proposal; then again, it may be. There is no mechanical process for making the tradeoff.

Step 11: Negotiate changes to the plan of services (if any)

You may condition the contract award on successful negotiation of revisions to the plan of services identified by the evaluator(s) during the proposal evaluation phase of the process. The scope of these negotiations is strictly limited. Only the plan of services is subject to negotiation; the RFP specifications, scope of services, contract terms, and price are non-negotiable.

If the RFP did not require proposers to submit a plan of services, or if the evaluators identified no recommended changes in the plan of services included in the proposal deemed "most advantageous" by the CPO, there is nothing to negotiate.

Step 12: Award the contract

You must give written notice of the award decision to the selected proposer within the time for acceptance you specified in the RFP. The time for acceptance may be extended with agreement of the parties.

If you do not award the contract to the responsive and responsible proposer offering the lowest price, you must prepare a written explanation of your reasons and detail your basis for determining that the quality of supplies or services under the contract will not exceed your needs. For example:

> The lowest-priced proposal received a composite rating of "not advantageous" because the sample training materials were poorly written and lacked specific step-by-step instructions to guide those being trained. I have determined that the cost savings offered by this proposal do not compensate for the lower quality of this proposer's training materials in comparison with the training materials provided by other proposers. Therefore, I am awarding this contract to the next lowest-priced proposal which received a composite rating of "advantageous" and will provide us with more effective training materials.

Sometimes a contract will require payment of a monetary sum to your jurisdiction. For example, you might award an auditorium management contract under which the management firm pays you a monthly fee and retains the auditorium revenues. If you award the contract to anyone other than the proposer submitting the highest price, you must explain in writing the reasons for the award.

If you did not include in the contract a revision to the plan of services recommended by the evaluator(s), you must explain in writing the reasons for omitting the revision from the plan of services, as the plan will be incorporated by reference into the contract.

Step 13: Execute the contract

After you notify the successful proposer of the award, execute a written contract containing all the terms and conditions stated in the RFP. You may not change the terms and conditions of the contract.

> ☞ **If the successful proposer refuses to execute the contract:** You may award the contract to the proposer you determine to have offered the next most advantageous proposal. Discuss with your local attorney what action should be taken against the recalcitrant proposer. If the proposer posted a bond, consider attempting to collect against the bond.

If you are unsure about who has the appropriate authority to sign the contract, consult with your local attorney.

Step 14: Retain records of the RFP process

A file of all written documents required by Chapter 30B must be maintained for a period of six years from the date of final payment under a contract. These documents include the following:

- the written rationale for the decision to use an RFP;
- the RFP, including any amendments;
- any justification for use of proprietary specifications;
- the public advertisement;
- the *Goods and Services Bulletin* notice if contract is for $100,000 or more;
- the register of proposals;

- all proposals received, including the certified statement of each proposer that the proposal was made in good faith;
- any proposal corrections, modifications, withdrawals, and notices of bid corrections, modifications, or withdrawals;
- any notices of proposal rejections or cancellation;
- the individual and composite proposal ratings and written explanations;
- the written rationale for the contract award, if the contract was not awarded to the proposer submitting the best price;
- any written rationale for omitting recommended revisions to the plan of services as incorporated into the contract;
- the notice of the contract award; and
- the executed contract.

The contents of the proposal file must be open to public inspection.[46]

[46]M.G.L. c.30B, §3.

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CHAPTER 6
SUPPLY AND SERVICE CONTRACTS: SPECIAL CASES

This chapter reviews three unique and limited methods for awarding supply and service contracts under Chapter 30B: sole-source procurements; emergency procurements; and exercising contract options to renew, extend, or purchase.

Sole-Source Procurements

A "sole-source" procurement means a purchase of supplies or services without advertising or competition. Chapter 30B places strict limitations on sole-source procurements.

> ☞ **You can accept a single quote, bid, or proposal submitted in response to a proper solicitation of quotes, IFB, or RFP.** Receiving one response is not the same as making a sole-source procurement.

Contracts under $10,000. You may make sole-source procurements of any supply or service under $10,000 when a reasonable investigation shows that there is only one practicable source for the required supply or service. Your determination that only one practicable source exists must be in writing.

Contracts for $10,000 or more. You may *not* make a sole-source procurement of $10,000 or more *except* for the following:

- *School textbooks and library books:* You may make noncompetitive purchases in any amount for school textbooks (including educational curricula in computerized media) and library books if you determine in writing, after reasonable investigation, that there is only one practicable source for the items.

- *Utilities:* You may purchase water, sewer, gas, electricity, and telephone services from a public utility company[47] in any amount without competition if you certify in writing that there is only one practicable source for the services.

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[47] Public utility company is defined in M.G.L. c.25, §3.

Record-keeping. You must maintain a written record of every sole-source procurement, specifying the contractor's name, the amount and type of contract awarded, a listing of the supplies or services procured, and the basis for your determination that there was only one practicable source for the purchase.

Emergency Procurements

If the time required to comply fully with a Chapter 30B requirement would endanger the health or safety of people or property due to an unforeseen emergency, you may procure the needed item or service without complying with the Chapter 30B requirement. Even under emergency circumstances, however, you must comply with Chapter 30B to the extent possible. For example, if you do not have time to advertise for two weeks, you can shorten the advertising period; or, if you have no time to advertise, you can solicit quotes. You may procure only those supplies or services necessary to meet the emergency.[48]

You must maintain a record of each emergency procurement, documenting the basis for determining that an emergency exists, the name of the vendor, the amount and type of contract, and a list of the supplies or services purchased under each contract. We recommend that you also include in your record all procedures followed to elicit competition. Your record of an emergency procurement must be submitted as soon as possible to the *Goods and Services Bulletin* for publication.[49]

The Massachusetts Supreme Judicial Court has held that a jurisdiction cannot artificially create an emergency by postponing normal purchases.[50] If you had reason

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[48]M.G.L. c.30B, §8.

[49]A sample emergency procurement form is at Appendix C of this manual. You may mail or fax the completed form to the *Goods and Service Bulletin*, Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136.

[50]Safford v. Lowell, 255 Mass. 220 (1926).

to know in advance that you needed the supplies or services, and you failed to act until the need became critical, you will have difficulty justifying an emergency procurement. Invoking the emergency procedures in the absence of a genuine emergency could invalidate your contract.

Exercising Options to Extend, Renew, or Purchase

Chapter 30B places strict limits on contract extension, renewal, and purchase options.[51] You may only exercise an extension, renewal, or purchase option if the option terms were advertised in the original IFB or RFP, and the contract provides your jurisdiction with sole discretion, without the consent of the contractor, to exercise the option.

Before exercising any renewal, extension, or purchase option, you must determine whether it is more advantageous to your jurisdiction to exercise the option or to undertake a new procurement.[52] To make this determination, you need to conduct a reasonable investigation of the cost and benefits and to document your findings in writing. A reasonable investigation must establish that the prices you will pay after exercising the option or renewing the contract are reasonable under current market conditions. You may consider conducting a formal, advertised competition for the term of the extension or renewal. Then, if you receive no better bid or proposal, you can exercise the contract option.

You may not extend or renew any contract subject to Chapter 30B if the original contract solicitation and award did not comply with Chapter 30B requirements. This prohibition applies to all contracts now subject to Chapter 30B, *including* contracts executed before Chapter 30B took effect on May 1, 1990.

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[51]M.G.L. c.30B, §12.

[52]M.G.L. c.30B, §12(e).

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CHAPTER 7
DISPOSAL OF SURPLUS SUPPLIES

Chapter 30B sets out procedures to ensure that you obtain the best possible return when you dispose of supplies that are no longer useful to your jurisdiction.[53] These rules apply to all tangible surplus supplies including motor vehicles, machinery, computer equipment, furniture, and other materials and supplies. The term "supplies" does not include real property.

You may dispose of surplus supplies valued at less than $500 using any method allowed under written procedures established by your jurisdiction. Such procedures might, for example, allow you to hold a yard sale to sell the items.

For supplies with a resale or salvage value of $500 or more, you can use any of three alternate methods of sale: (1) sealed bids, (2) public auction,[54] or (3) an established market. An "established market" is one in which commodities are regularly sold in wholesale lots and prices are set by open competition. As a practical matter, this option will rarely be available, and you will almost always sell supplies via sealed bids or auctions.

☞ **You can swap surplus supplies for surplus supplies in another jurisdiction.** A transaction like this would be exempt from Chapter 30B as an intergovernmental agreement.

☞ **You can advertise and bid multiple surplus supplies together.** This will make sense when you are disposing of supplies that fall into the same category, such as office equipment. You have the option of accepting a lump sum offer on a package of supplies or accepting the highest bid on each individual item, whichever will yield the best price. For example, if you receive separate offers on three items and a lump sum offer which is higher than the sum of the highest bid on each item, then you can accept the lump sum offer.

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[53]M.G.L. c.30B, §15.

[54]Police departments must auction unclaimed property pursuant to M.G.L. c.135, §8.

You may also trade in supplies when making new purchases. Or, if approved by a majority vote of the governing body in your jurisdiction, you may donate surplus supplies to a charitable organization.

Sale by Bid or Auction

The following steps apply to the sale of surplus supplies by either soliciting bids or holding a public auction:

Step 1: Prepare a notice of sale

The notice must include the following information:

- a complete description of the surplus supplies offered (you may refer to other documents that provide detailed information, if you specify where bidders may obtain those documents);
- when, where, and how the surplus supplies can be inspected by the public prior to the bid opening or auction;
- all terms and conditions of the sale, such as any deposit required to participate in the bid or auction, the form of payment required, the rules governing the bid or auction, and the time by which the supplies must be removed after the purchase;
- the place and deadline for submitting bids, and the place, date, and time for the bid opening or auction;
- a statement that you retain the right to reject any and all bids;
- a statement that every bid must be signed by a person authorized to bind the bidder; and
- a statement that every bid must be accompanied by a signed non-collusion form. (A non-collusion form is contained in Appendix C.)

Step 2: Advertise the sale

You must advertise the sale of all supplies greater than $500 in value by both posting a notice of sale for at least two weeks in a conspicuous place at your offices, and publishing the notice of sale not less than two weeks prior to the bid opening or

auction in a newspaper of general circulation in your jurisdiction.[55] If the supplies you are selling have an estimated value of $100,000 or more, the notice must also be published two weeks prior to the bid opening or auction in the Secretary of State's *Goods and Services Bulletin*.[56] You may send copies of the notice to anyone who might be interested after it has been posted and published.

Step 3: Open the bids or hold the auction

If you have solicited sealed bids, open the bids in public. You must reject any bid which is nonresponsive: one which does not conform to the terms and conditions set forth in your notice of sale or bid documents.

If you hold an auction, it must be open to the public. You may want to confer with or use the services of a professional auctioneer. (A service contract with an auctioneer would also be subject to Chapter 30B.) The auction must, of course, be conducted in conformity with the rules spelled out in the notice of sale.

☞ **If you believe bids are too low, you can reject all bids and readvertise or negotiate the sale.** If you decide to negotiate a sale, the sale price must be higher than the highest bid price you received. (If you received no bids in response to your advertisement, the highest bid price would be zero.)

Step 4: Record the sale or execute a sales agreement

The surplus supply or supplies must be sold to the highest responsive bidder in conformity with all the terms and conditions spelled out in the notice of sale. However, you may reject all bids. If the successful bidder takes possession of the

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[55]The Secretary of State has granted the city of Boston permission to publish a periodical listing contract opportunities as a substitute for advertising in a newspaper.

[56]You may mail or fax the completed form to the *Goods and Services Bulletin*, Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136. There is no charge for advertising in the *Bulletin*.

supply on the spot, a record of the transaction should be made and the purchaser should sign a written acknowledgement of receipt of the supply. If the supply is to be picked up and paid for later, you should execute a written sales agreement with the successful bidder as soon as you accept the bid.[57] The agreement should include the description of the supplies sold, the price, and all conditions of the sale.

Charitable Donations

You can dispose of surplus supplies at less than fair market value to any organization which has an IRS tax exempt status by reason of its charitable nature. Any such donation must be approved in advance by a majority vote of your jurisdiction, defined as follows:

- for towns or districts: a majority vote taken at a duly called town or district meeting;
- for cities: a majority vote of the city council or the city commissioners, and the approval of the mayor if such approval is required under the city charter;
- for counties: a majority vote of the county commission;
- for regional school districts: an affirmative vote by *two-thirds* of the members of the school committee; and
- for redevelopment, housing, or other authorities: a majority vote of the governing board.

Trade-ins

Surplus supplies can be traded in when making a purchase. Your IFB or RFP should specify the items to be traded in as part of the procurement. Keep in mind that you may get a better price for surplus supplies from someone other than the offerors responding to the IFB or RFP. It will often be more cost-effective to separate the transactions by selling the surplus supplies through a bid or an auction before or after you have purchased the new supplies.

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[57]All Chapter 30B contracts of $5,000 or more are void unless they are in writing (M.G.L. c.30B, §17).

CHAPTER 8
REAL PROPERTY TRANSACTIONS

Chapter 30B applies to real property transactions including purchases, sales, leases, and tenancies at will, and the acquisition or disposition of an easement. Chapter 30B establishes procedures which you must follow in acquiring real property by purchase or rental with a **cost** greater than $500, and in disposing of real property by sale or rental with a **value** greater than $500.[58]

The following real estate transactions are *not* subject to Chapter 30B:

- eminent domain takings;[59]
- rental of residential property to qualified tenants by a housing authority or redevelopment authority;[60]
- a contract to sell or lease industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority;[61]
- redemption or auction of tax title property authorized under the provisions of M.G.L. c.60;[62]
- a transaction with the federal or state government or with another municipality;[63]
- a transfer of real property between a municipality and a municipal authority, board or commission such as a housing authority, educational collaborative, or conservation commission;[64]
- exercise of an option to purchase forest, agriculture, or recreation land for conservation purposes under M.G.L. c.61, 61A or 61B;
- licenses or permits for limited use of real property.

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[58]M.G.L. c.30B, §16.

[59]Eminent domain procedures are found in M.G.L. c.79.

[60]M.G.L. c.30B, §16(h).

[61]M.G.L. c. 30B, §(1)(b)(25).

[62] However, any sale of tax title property by other than an auction, including sale after foreclosure, is subject to Chapter 30B. Procedures for tax title takings are set forth in M.G.L. c.60, §§37 through 60.

[63]M.G.L. c.30B, §1(3) and (9).

[64]M.G.L. c.30B, §1(b)(7).

☞ **Licenses or permits to use real property are not subject to Chapter 30B.** Use of an auditorium for a performance, and of ballfields for baseball games, are typical examples of licenses to use property: the use is temporary and the user does not actually control the property. Such licenses do not convey an interest in the property. However, any transaction that does involve the transfer of an interest is not exempted simply by incorrectly labelling it a license or permit.

☞ **Chapter 30B places no restrictions on who may undertake or approve a real property transaction.** Any governmental body authorized by law to acquire or dispose of real property may do so. Consult with your local attorney if you have questions about who may conduct real property transactions for your local government.

Chapter 30B allows you to shorten the period for advertising for proposals or dispense with advertising altogether in only two special circumstances: (1) in an emergency if you determine that the time required would endanger the health or safety of people or property; or (2) for an acquisition, if you determine that advertising for proposals would not benefit your local government because of the unique quality or location of the property you need. Additional information on this topic is presented at the end of this chapter's section on acquisitions.

Under Chapter 30B, you must acquire and dispose of real property by soliciting proposals. This means that you must conduct an open and fair competition that places all proposers on common footing, solicit information that will allow manageable and meaningful comparisons of offers, and base your decisions solely on the information you solicited.

Chapter 30B gives you flexibility in fashioning a proposal process for real property. You may structure your RFP to resemble a bid, whereby you will select the proposer who meets your minimum requirements and offers the best price, or to resemble an RFP for supplies or services in which you will also consider the relative merits of the proposals submitted.

The remainder of this chapter presents in two separate sections how to acquire and dispose of real property.

Real Property Acquisition

You will use a request for proposals to acquire real property by rental or purchase at a *cost* of more than $500.[65] The *value* of the property is irrelevant to determining whether Chapter 30B applies. For example, you may accept a gift of valuable property without issuing a RFP, because the cost is less than $500.

Step 1: Determine what you need to acquire

As a practical matter, before you acquire any property you must determine what you need. The initial cut at determining your needs may be simple: for example, you need land for a public works yard, a parking lot, or office space. However, consider the details. For example:

- Do you want to purchase the property or lease it?
- How much land or office space is needed? Are you interested in acquiring a set amount, or are you willing to consider offers for more than your minimum needs?
- What level of finish do you want for office space?
- What are your location requirements? Is any area in your jurisdiction acceptable?
- How much parking is needed? Is there access to public transportation?
- Is there wheelchair access?
- Are there any environmental issues relevant to the site?
- Are there any special utility requirements?

Once you have identified what you need, check to see whether your local government already owns a suitable property. If you have a real property inventory, consult it. Also consult with department heads and other officials concerning the current and future availability of property to meet your needs.

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[65]M.G.L. c.7, §40J, requires filing a disclosure statement with the Commissioner of the Division of Capital Planning and Operations listing persons with a beneficial interest in any real property transaction involving a public agency *regardless of the cost or the value of the real property.* A copy of a form for this purpose is at Appendix C.

Determining what you need is not the same as identifying the particular parcel or building you want. Although your research may identify one parcel or building which is suitable, you will not know before advertising whether you have found the only property which meets your needs. If you suspect there may only be one suitable parcel or building, consider whether your definition of your needs was unnecessarily restrictive.

☞ **You may not contract for construction of a building at a cost of $10,000 or more using the Chapter 30B procedures.** A contract for the purchase of a building that will be constructed to your specifications is a public building contract subject to the designer selection and construction bid laws. Chapter 9 briefly reviews information about these laws.

Step 2: Develop the RFP

Your RFP provides property owners with the information necessary to prepare and submit a responsive proposal. The major components of an RFP are:

- description of the property and interest required,
- evaluation criteria,
- proposal submission requirements, and
- contract terms and conditions.

Property description. Your RFP must describe what type of property you need and whether you want to acquire property by purchase or lease. You should, at a minimum, identify the following:

- the type and amount of property you need (for example, "20,000 square feet of land");
- the purpose for which the property is to be used (for example, "a public works yard");
- any special requirements (for example, "that the property not be adjacent to wetlands or over an aquifer");
- the method of acquisition, such as a lease or purchase; and
- the planned occupancy date and, if you will lease, the lease term.

You may append other documents (for example, a study of your need for a public works yard) or reference and describe them, and indicate how they may be obtained.

Evaluation criteria. You must indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services (described in chapters four and five). You will establish:

- minimum criteria to evaluate *responsiveness* (whether the proposer agrees to provide property that meets your specifications and whether the proposal contains all the required documents and forms properly completed) and *responsibility* (whether the proposer has the capability, reliability, and integrity to perform under the contract);
- *comparative criteria* if you decide that you want to look at the relative merits of the property proposals rather than just selecting the responsive and responsible proposal that offers the best price; and
- a method to evaluate *prices*.

The box on the next page illustrates two alternate methods of using evaluation criteria in real property acquisitions. The first is, in effect, a bid process through which you will acquire property by selecting the lowest priced proposal meeting your minimum defined requirements. The second is a proposal process in which you may select a higher-priced proposal because of advantages of the higher-priced property.

Whatever process you use, you must inform proposers how you will determine the best price. For example, in a multi-year lease, will you accept only proposals for level monthly payments over the term, or will

☞ **You may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and allows manageable and meaningful comparisons.** You have the option to use the same rating categories that are used in Chapter 30B RFPs for supplies and services: highly advantageous, advantageous, not advantageous, and unacceptable.

☞ **You may solicit prices for two different lease terms if you state a rule for how you will decide which term to select.** This can be useful if you want to compare, say, a five-year lease to a ten-year lease. Be careful to establish a good decision rule up front and follow it to avoid the appearance of favoritism.

Real Property Acquisitions: Evaluation Criteria Examples

Example 1: Parking Lot. Your jurisdiction has a shortage of public parking in the central business district. You have decided to purchase land to accommodate between 100 and 150 standard-sized parking spaces. You have obtained an engineering estimate for the cost of paving, painting and installing meters. Your minimum criteria for a suitable site are: minimum square footage; suitable grade and drainage; located within a one-half mile radius from a particular governmental office.

All of your criteria are stated as minimum requirements, so you can evaluate all of the proposals which meet your criteria on the basis of price per parking space. If you want to consider proposals for paved and unpaved sites, you will add the cost of paving to any proposal offering an unpaved site when you compare prices.

This proposal process resembles a bidding process in which you will select the lowest priced responsive and responsible proposal. This method of evaluating proposals is the simplest and most straightforward. You must be sure, however, to include all of your requirements as minimum criteria.

Example 2: Office Space. You need to acquire office space and have decided that a five-year lease would best meet your immediate needs and preserve your long term options.

You prepare an RFP which incorporates all of your requirements for space needs, accessibility, improvements, and amenities. You establish the following *minimum criteria for location:*

- within your jurisdiction in an area zoned for commercial use, and
- within four blocks of public transportation.

You also establish *comparative criteria* to identify the features which you prefer but do not require. You decide to give a higher rating to any proposal which meets one or both of the following comparative criteria:

- within one-half mile of town hall, and
- within two blocks of public transportation.

Using this evaluation scheme you can select the lowest-priced proposal which meets only your minimum criteria, or choose a higher-priced proposal that offers a preferred location if you determine that the added convenience justifies the price difference.

proposers be allowed to propose escalating rents for each year of the lease? If rent escalators may be proposed, you must state how will you calculate the discounted present value of the rental payments and include the formula in your RFP.

Similarly, if you plan to accept price proposals for a lease that includes utilities and for a lease that does not, you must include in the RFP the method you will use to determine the value of the utilities. To simplify price comparisons in a lease acquisition, it is helpful to provide a standard price form for all proposers to complete.

Proposal submission requirements. Your RFP must state the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. State that the selected proposer will be required to submit a disclosure of beneficial interests as required by M.G.L. c.7, §40J. Also include any standard forms proposers must submit.

☞ **Real property price and non-price proposals need not be submitted separately.** Unlike Chapter 30B RFPs for supplies and services, you need not require separate submissions of price and non-price proposals. Remember that real property price proposals are not confidential after they are opened.

Contract terms and conditions. Any terms and conditions you will require in the agreement must be specified in the RFP and in the contract. Chapter 30B places no limitations on the duration of real property contracts, but other laws may apply in your jurisdiction. Your local attorney can advise you regarding other laws applicable to your jurisdiction's real property transactions. The box on the next page contains information about contract terms and conditions for real property acquisitions.

Real Property Acquisitions: Contract Terms and Conditions

Purchases. If you are purchasing real property, have your attorney draft any terms that you will require to be incorporated into the purchase and sale agreement. Include any mandatory purchase terms in the RFP. Require a certification of tax compliance by the seller (M.G.L. c.62C, §49A).

Leases. If you are acquiring property by lease, mandatory lease terms must be spelled out in the RFP. A typical lease should:

a. name the parties to the lease and the responsible parties to receive any notices under the lease;
b. incorporate by reference the proposal chosen, including a detailed description of the leased property;
c. specify the duration of the lease, including any renewal, extension, or other options. If the lease will include a renewal option, you must specify how the rent will be determined for the renewal period; (We recommend that you retain sole discretion to exercise any option.)
d. identify the payment terms, including when payments are due;
e. spell out all of the responsibilities and obligations of the parties for leasehold improvements, repairs, maintenance, cleaning, utilities, rubbish disposal, snow removal, liability and casualty insurance, etc.;
f. specify that lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government;
g. specify what constitutes cause to terminate the lease, what notice must be provided prior to termination, and what opportunity must be granted to correct any problem;
h. prohibit any activity that would constitute a violation of the conflict of interest law (M.G.L. c.268A);
i. specify that the lease constitutes the entire agreement and that there are no agreements other than those incorporated therein; and
j. require a certification of tax compliance by the lessor (M.G.L. c.62C, §49A).

Step 3: Advertise for proposals

You must advertise for proposals in a newspaper with a circulation sufficient to inform the people in the affected locality.[66] The advertisement must be published at least once a week for two consecutive weeks preceding the day you selected for opening proposals. You may, of course, advertise in more newspapers, in newspapers outside your area, and more frequently.

The advertisement must specify the geographical area in which you are looking for property, the terms and conditions of the proposed lease or purchase, the time and place for submission of proposals, and where and when prospective proposers may obtain a copy of the RFP.

☞ **You may hire an agent to assist you in finding property that meets your needs.** The agent's task will be to find suitable property and encourage owners to submit proposals in response to your RFP. Your contract with the agent will be subject to Chapter 30B.

If the proposed acquisition involves more than 2,500 square feet, an advertisement must also be published, at least 30 days before the opening of proposals, in the *Central Register* published by the Secretary of State.[67]

You may inform potential proposers, including brokers and developers, of the availability of the RFP. Be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert selected developers of an upcoming acquisition in advance of the public notice.

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[66]M.G.L. c.30B, §16(d).

[67]A *Central Register* real property advertisement form is included in Appendix C. You may mail or fax the completed form to *The Central Register*, Office of the Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136. There is no charge for advertising in the *Central Register*.

Step 4: Distribute the RFP

You must make the RFP available on an equal basis to all who request a copy. If you charge a fee to cover your costs for copying the RFP, make sure you charge everyone the same fee.

Keep a record of who received the RFP. If you later issue an addendum to the RFP, send the addendum to all those who have already received the RFP. To avoid misunderstandings or protests, include a requirement in the RFP that proposers acknowledge in writing their receipt of any addenda. Also, if proposers are likely to require additional time to respond to the addendum, extend the proposal due date.

Step 5: Open and evaluate proposals

Proposals must be opened in public at the time and place specified in the RFP. You should record the name of each proposer, the location of the property each proposer is offering, and each proposal price. The proposals become public information when they are opened.

You must evaluate the proposals using only the criteria you identified in the RFP. If your RFP states that you will make an award to the responsive and responsible proposer who offers the best price (in essence, a bid process), you may simply identify the lowest-priced proposal, and then evaluate that proposal to determine whether it meets the requirements stated in the RFP. If the proposal does not meet the requirements, reject it and proceed to evaluate the next lowest-priced proposal.

If your RFP states that you will evaluate proposals using comparative evaluation criteria, it will usually be most efficient to first look at the responsiveness and responsibility of the proposals and reject any you find to be not responsive or not responsible. Then evaluate all the remaining proposals on both your comparative criteria and price. Prepare written evaluations. Finally, decide which proposal best meets the needs of your jurisdiction considering the comparative criteria and price.

Step 6: Submit disclosures

You must submit the name of the selected proposer and the amount of the transaction to the *Central Register* published by the Secretary of State.[68]

Also, M.G.L. c.7, §40J, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer's disclosure of beneficial interests must be filed with the Commissioner of the state Division of Capital Planning and Operations (DCPO). No contract to lease or sell property is valid until the seller or lessor files this form with DCPO. (A form for this purpose is in Appendix C.) An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Step 7: Execute the contract

If you are purchasing real property, have your attorney ensure that any mandatory terms required by the RFP are incorporated into the purchase and sale agreement.

If you are acquiring property by lease, execute a lease that incorporates all of the terms and conditions required by the RFP.

Step 8: Retain records

You must maintain a file of all written documents required by Chapter 30B for a period of six years from the date of final payment under the contract. These include:

- the RFP and any amendments to the RFP,
- the public advertisement,
- all *Central Register* notices,
- all proposals received,
- evaluation materials,
- a copy of the disclosure of beneficial interests, and
- the signed purchase and sale agreement or lease.

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[68]You must publish this information in the *Central Register* for any acquisition that costs more than $500, regardless of the size of the property and whether you previously advertised for proposals in the *Central Register*.

Real Property Acquisition:
Unique Property Acquisitions and Emergencies

Unique acquisitions

You do not need to prepare an RFP or seek proposals to acquire property if your jurisdiction has determined that it needs a particular piece of property because of its unique qualities or location. You may use this provision to acquire, for example, open land abutting an existing park or a particular parcel of wooded land for conservation purposes. You may not, however, use this provision to acquire property simply because you are not aware of any other property that will meet your requirements. For example, if you need space for an office in a particular area, you may be aware of only one available location but you must still advertise for proposals to test the market.

☞ **Chapter 30B does not authorize "swaps" or real property between a local government and a private party.** You can acquire the property without competition if it meets the requirements for a unique acquisition, but there is no basis for disposing of property without an advertised competition.

The Chapter 30B rules for acquiring unique property require you to make a written determination that advertising will not benefit your jurisdiction because of the unique qualities or location of the property needed. The determination must specify how the property proposed for acquisition satisfies the unique requirements of your jurisdiction.

Although such acquisition of real property is exempt from the RFP process, you must publish an advertisement in the Central Register at least 30 days prior to executing a binding agreement to acquire the property. The advertisement must include:

- the written determination of uniqueness,
- the names of the parties with a beneficial interest in the property,
- the location and size of the property, and
- the proposed purchase price or rental terms.

☞ **You may acquire an option to purchase unique property before publishing a public notice.** An option to purchase is not an interest in real property. After you have identified property which meets the standard for waiving the advertised RFP process, you may secure an option for the property obliging the owner to sell it to you for an agreed upon price. You can then publish the required 30-day notice in the *Central Register.*

A sample form for this purpose is included in Appendix C.

The agreement will not be valid until the disclosure of parties with a beneficial interest in the property, required by M.G.L. c.7, §40J, is filed with the Commissioner of the Division of Capital Planning and Operations. Appendix C contains a sample form you may use for this purpose.

Emergencies

If an emergency arises and the time required to advertise for real property proposals would endanger the health or safety of people or property, you may shorten the advertising period or waive it completely. Simple administrative inconvenience will not suffice as a justification for invoking the emergency provisions of Chapter 30B; a genuine emergency must exist. If you have reason to know in advance that additional leased space or a property purchase will be needed, and you fail to act until the need has become critical, you will have difficulty justifying the use of emergency procedures.

If you invoke this provision, you must publish a notice in the *Central Register* at the earliest opportunity stating the reason for declaring the emergency. Appendix C contains a sample form you may use for this purpose. You may contract only for the length of time which is reasonably necessary to deal with the emergency.

Real Property Disposition

You will use requests for proposals to dispose of real property with a value of more than $500.[69] The procedures are triggered by the *value* of the property, not the price your local government will receive for the disposition.

Most often, jurisdictions dispose of property when it is no longer needed, although sometimes even property that could be used by the jurisdiction may be leased to promote some public purpose. In assessing whether and how to dispose of surplus property, consider both current and possible future needs. It is best to be systematic: develop an inventory of your jurisdiction's property, survey department heads, and invite public comment. If you find that your jurisdiction might need the property in the future, be sure to structure a lease term so that the property is available for use when needed.

Step 1: Declare property available for disposition and identify reuse restrictions

Before you can sell or lease property, regardless of its value, it must be declared available for disposition by the individual or body with the authority to make such a determination for your jurisdiction. If your jurisdiction wishes to impose any restrictions on reuse of the property, they must be specified as part of the declaration that the property is available for disposition. For example, if you are selling or leasing a surplus school building, you may not care what use the building will be put to by the new owner or lessee, except that the use be legal and conform to local zoning requirements. In that case, you would not specify a reuse restriction. However, if you were leasing only part of a school building, M.G.L. c.40, §3, would require you to specify that the reuse be compatible with the functioning of the school.

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[69]M.G.L. c.7, §40J, requires filing a disclosure statement with the Commissioner of the Division of Capital Planning and Operations listing persons with a beneficial interest in any real property transaction involving a public agency *regardless of the cost or value of the real property*. A form for this purpose is at Appendix C.

Step 2: Determine the value of the property

You must determine the value of the interest you propose to dispose of before you can dispose of any property. Chapter 30B requires that you determine the property's value by using procedures customarily accepted by the appraising profession as valid. You may hire an appraiser, although you are not required to do so. You may also rely on the municipal assessment of a property's value if it is current, if the municipality is assessed at 100 percent, and if the assessment is determined through valid procedures. For a lease, you may use market rent data or even advertised rental rates, if there are sufficient number of similar properties on the market to determine the lease value.

Step 3: Develop the RFP

Your RFP provides interested parties with the information they need to decide whether they want the property you are selling or leasing and to submit a responsive proposal. The major components of a disposition RFP are:

- description of the property and interest in the property you plan to sell or lease (the "property description"),
- evaluation criteria,
- proposal submission requirements, and
- the contract terms and conditions.

Property description. The property description must be detailed enough for interested parties to understand what you are offering. Be sure to identify reuse restrictions established by your jurisdiction. If the property is being offered for sale, include a reference to a deed or survey. Also identify in the property description the buildings and structures included in the disposition and any restrictions on their use, such as deed restrictions. Drawings, plot plans, or other relevant documents should either be appended to the specifications or incorporated by reference.[70] The notice

[70]You can incorporate a document by reference in your specifications, describe the document, and indicate where the document is located and how it can be obtained.

must state the terms of the disposition, including whether it is a sale or lease. If it is a lease, state its duration and whether utilities will be included in the lease price or must be paid separately by the lessee.

Evaluation criteria. You must indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services (described in Chapters 4 and 5). You will establish:

- minimum criteria to evaluate *responsiveness* (whether the proposer agrees to meet your terms and the proposal contains all the required documents and forms properly completed) and *responsibility* (whether the proposer has the capability, integrity, and reliability to perform under the contract);
- *comparative criteria* if you decide that you want to look at the relative merits of the property proposals rather than just selecting the responsive and responsible proposal that offers the best price; and
- a method to evaluate *prices*.

Although Chapter 30B requires proposals, you have the discretion to structure your RFP so that it is, in effect, an invitation for bids, where you will select the proposal which meets your minimum criteria and offers the highest price. If your objective is simply to dispose of property you do not need, you should sell the property to the proposer offering the highest price. In this instance, your RFP should set out simple minimum criteria and award the contract to the qualified proposer offering the highest price for the property. The minimum criteria might include:

☞ **You may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and allows manageable and meaningful comparisons.** You have the option to use the same rating categories that are used in Chapter 30B RFPs for supplies and services: highly advantageous, advantageous, not advantageous, and unacceptable.

- a proposal deposit requirement to ensure that only serious proposers participate (a successful proposer who fails to close on the deal would forfeit the deposit), and
- evidence of the proposer's ability to obtain financing.

You must inform proposers how you will determine the best price. For example, in a multi-year lease, specify whether proposers must propose level monthly payments over the term, or that they must propose an escalating rents, or that you will apply an escalating factor. If proposers will propose escalating rent, you must state how you will calculate the discounted present value of the rental payments and include the formula in your RFP. To simplify lease price comparisons it is helpful to provide a standard price form for all proposers to complete.

If you are interested in promoting a public purpose and price is less important, you will have to carefully think through what you want and how you will evaluate it. The box on the next page presents information on dispositions to promote public purposes.

Proposal submission requirements. Your RFP must state the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. State that the selected proposer will be required to submit a disclosure of beneficial interests as required by M.G.L. c.7, §40J. Also include any standard forms proposers must submit.

☞ **Real property price and non-price proposals need not be submitted separately.** Unlike Chapter 30B RFPs for supplies and services, you need not require separate submissions of price and non-price proposals. Remember that real property proposals are not confidential after they are opened.

Contract terms and conditions. Any terms and conditions you will require in the agreement must be specified in the RFP and in the contract. Chapter 30B places no limitations on the duration of real property contracts, but other laws may apply in your jurisdiction. Your local attorney can advise you regarding other laws applicable to your

Real Property Dispositions to Promote Public Purposes

Your jurisdiction may own real property that you would like to offer for lease or sale in order to promote a public purpose rather than to raise revenue. Based on long-standing interpretations of the Massachusetts State Constitution, if you intend to dispose of real property for less than its fair market value, you must define a valid public purpose to be achieved. Individuals or private organizations may realize incidental benefits from a disposition of public property, but the primary purpose must be to promote the public welfare.

You must structure an open, fair, and competitive disposition process to accomplish your public purpose.

Example 1: Affordable Day Care. You determine that your jurisdiction has a shortage of affordable day care and you decide to lease available space in a school building to a day care provider.

Since the primary objective of this disposition is not to obtain the maximum amount of rent, you set a fixed rent and specify the lease terms for insurance, utilities, maintenance, etc. You require all proposers to meet any minimum requirements such as staff training and experience, staff/child ratio, number of children from low-income families to be served, parent participation on governing board, nutrition programs, hours of operation, etc. You then develop evaluation criteria to choose the proposal which best meets your objective of providing high-quality, affordable day care. Under the most straightforward evaluation scheme, you would require proposers to submit a sliding fee scale based on family income and select the responsive and responsible proposal offering the lowest fees to the maximum number of families in need of affordable day care.

Example 2: Affordable Housing. Your jurisdiction owns surplus land. You decide to create affordable housing by dividing the property into lots for sale to low- or moderate-income purchasers.

You must specify qualifications for purchasers including maximum income and asset limitations and determine the methods you will use to verify these qualifications. You must also restrict the use of the property and the profit that can be realized by the resale of the property to ensure that the plan meets its objective of creating and preserving affordable housing and does not result in a windfall profit to any individual. After you have established such a plan, you may solicit proposals from prospective homeowners and use any fair and accountable method for proposal selection. If you choose, you may establish a set price for each lot and advertise for proposals from eligible families and individuals. You may then use a public lottery to select winners from among the responsive and responsible proposals.

jurisdiction's real property transactions. The box on the next page contains information about contract terms and conditions for real property dispositions.

Step 4: Advertise for proposals.

You must advertise for proposals in a newspaper with a circulation sufficient to inform the people of the affected locality.[71] The advertisement must be published at least once a week for two consecutive weeks preceding the day you selected for opening of proposals. You may, of course, advertise in more newspapers, in newspapers outside your area, and more frequently.

☞ **Advertise where you will maximize exposure to potentially interested parties.** For example, if you are offering to lease office space, you will probably reach more potential lessees by advertising in the classified section under "office space" rather than advertising in the legal notices section.

The advertisement must specify the geographical area, the terms and conditions of the proposed transaction, and the time and place for submission of proposals. It must also state where and when prospective proposers may obtain a copy of the RFP.

☞ **If necessary, you can hire a broker to help dispose of property.** The broker's job will be to show the property and encourage the submission of sealed proposals on the due date. Your contract with the broker will be subject to Chapter 30B.

If the proposed disposition involves more than 2,500 square feet, an advertisement must also be published, at least 30 days before the opening of proposals, in the *Central Register* published by the Secretary of State.[72]

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[71]M.G.L. c.30B, §16(d).

[72]A *Central Register* real property advertisement form is included in Appendix C. You may mail or fax the completed form to *The Central Register,* Office of the Secretary of State, Regulations Division, Room 2A, One Ashburton Place, Boston, MA 02108; Fax: (617) 742-4822; Telephone: (617) 727-9136. There is no charge for advertising in the *Central Register.*

Real Property Dispositions: Contract Terms and Conditions

Purchases. If you are selling real property, have your attorney draft any terms that you will require to be incorporated into the purchase and sale agreement. Include any mandatory purchase terms in the RFP. Require a certification of tax compliance by the purchaser (M.G.L. c.62C, §49A).

Leases. If you are disposing of property by lease, mandatory lease terms must be spelled out in the RFP. A typical lease should:

a. name the parties to the lease and the responsible parties to receive any notices under the lease;
b. incorporate by reference the proposal chosen, including a detailed description of the leased property;
c. specify the duration of the lease, including any renewal, extension, or other options. If the lease will include a renewal option, you must specify how the rent will be determined for the renewal period;
d. identify the payment terms, including when payments are due;
e. spell out all of the responsibilities and obligations of the parties for leasehold improvements, repairs, maintenance, cleaning, utilities, rubbish disposal, snow removal, liability and casualty insurance, etc.;
f. specify that lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government;
g. prohibit assignment or subletting without written approval;
h. specify what constitutes cause to terminate the lease, what notice must be provided prior to termination, and what opportunity must be granted to correct any problem;
i. prohibit any activity that would constitute a violation of the conflict of interest law (M.G.L. c.268A);
j. specify that the lease constitutes the entire agreement and that there are no agreements other than those incorporated therein; and
k. require a certification of tax compliance by the lessee (M.G.L. c.62C, §49A).

You may inform potential proposers, including brokers and developers, of the availability of the RFP. Be careful to avoid favoritism or the appearance of favoritism. For example, it would not be proper to alert selected developers of an upcoming disposition in advance of the public notice.

Step 5: Distribute the RFP

The RFP must be made available on an equal basis to all who request a copy. You may inform potential proposers, including brokers and developers, of the availability of the RFP. Keep a record of who received the documents. If you later issue an addendum to the RFP, send the addendum to all those who have already received the RFP. To avoid misunderstandings or protests, you may want to require proposers to acknowledge in writing their receipt of each addendum. Also, if proposers are likely to require additional time to respond to the addendum, extend the proposal due date.

Step 6: Open and evaluate proposals

Proposals must be opened in public at the time and place specified in the RFP. Chapter 30B affords no confidentiality to real property proposals. You should record the name of each proposer and the proposal price. The proposals become public information when they are opened.

You must evaluate the proposals using only the criteria you identified in the RFP. If your RFP states that you will make an award to the responsive and responsible proposer who offers the best price (in essence, a bid process), you may simply identify the highest priced proposal, and then evaluate that proposal's responsiveness and responsibility against the minimum criteria specified in the RFP. If you determine that a proposal is not responsive or responsible, reject it and proceed to evaluate the next highest proposal.

If your RFP states that you will evaluate proposals using comparative evaluation criteria, it will usually be most efficient to look first at the responsiveness and responsibility of the proposals and reject any you find to be not responsive or not responsible. Then evaluate all the remaining proposals on both your comparative criteria and price. Prepare written evaluations. Finally, decide which proposal best meets the needs of your jurisdiction considering the comparative criteria and price.

Step 7: Submit disclosures

You must submit the name of the selected proposer and the amount of the transaction to the *Central Register* published by the Secretary of State.[73]

Also, M.G.L. c.7, §40J, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer's disclosure of beneficial interests must be filed with the Commissioner of the state Division of Capital Planning and Operations (DCPO). No contract to lease or sell property is valid until the buyer or lessee files this form with DCPO. (A form for this purpose is in Appendix C.) An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Step 8: Execute the contract

If you are selling real property, have your attorney draft a purchase and sale agreement that incorporates all of the mandatory terms and conditions required by the RFP. If you are disposing of the property by lease, execute a lease which incorporates all the terms and conditions stated in the RFP.

Step 9: Retain records

You must maintain a file of all written documents required by Chapter 30B for a period of six years from the date of final payment under the contract. These documents include the following:

- the declaration that property is available for disposition,
- the RFP and any amendments to the RFP,
- the public advertisement,
- all *Central Register* notices,
- all proposals received,
- evaluation materials,
- a copy of the disclosure of beneficial interests, and
- the signed purchase and sale agreement or lease.

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[73]You must publish this information in the *Central Register* for any disposition with a value of more than $500, regardless of the size of the property and whether you previously advertised for proposals in the *Central Register*.

Emergencies

If an emergency arises an the time required to advertise for real property proposals would endanger the health or safety of people or property, you may shorten the advertising period or waive it completely. Simple administrative inconvenience will not suffice as a justification for invoking the emergency provisions of Chapter 30B; a genuine emergency must exist. If you have reason to know in advance that a tenant will be vacating a facility, and you fail to advertise in advance, you will not be able to justify using the emergency provisions for an unadvertised, short-term rental to avoid the risks presented by an unoccupied building.

If you invoke this provision, you must publish a notice in the *Central Register* at the earliest opportunity stating the reason for declaring the emergency. Appendix C contains a sample form you may use for this purpose. You may contract only for the length of time which is reasonably necessary to deal with the emergency.

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CHAPTER 9
CONSTRUCTION-RELATED CONTRACTS

In general, Chapter 30B *does not apply* to contracts for construction and construction materials or for design services (principally architectural and engineering services) for specific building and public works projects. However, it *does apply* to the services of architects and engineers that are not related to construction projects. In addition, you may opt to use Chapter 30B procedures when awarding small contracts (between $10,000 and $25,000) for construction or construction materials.

This chapter briefly identifies the requirements applicable to various design and construction contracts. If you require more detailed information, you may obtain a copy of the Inspector General's manual, *Designing and Constructing Municipal Facilities*, from the State Bookstore.

Design Service Contracts

Design services in connection with a specific public construction project are exempt from Chapter 30B.[74] Design services include preparation of master plans, feasibility and other studies, surveys, soils tests, cost estimates, or programs; preparation of drawings, plans, and specifications, including schematics and preliminary plans; supervision or administration of a construction contract; and construction management and scheduling.

Public building projects. When you have a building project[75] estimated to cost more than $100,000, any contract for design services on the project is subject to the state's designer selection law.[76] The state's Designer Selection Board has issued

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[74]M.G.L. c.30B, §2.

[75]A building project entails the planning, acquisition, design, construction, demolition, installation, repair, or maintenance of a building.

[76]M.G.L., c.7, §38A½-N.

guidelines for local jurisdictions to follow in awarding building design contracts. Appendix A contains information on how to contact the DSB.

Public works projects. Design service contracts for a specific public works project (such as a road, bridge, sewer, or landfill construction project), are not subject to either the designer selection law or Chapter 30B. Nevertheless, we recommend that you conduct an advertised, competitive process to award public works design contracts with a construction cost estimate over $100,000. Whether you follow the designer selection law procedures or the Chapter 30B procedures, fostering competition among qualified engineering firms is the best way to ensure that you obtain the quality services you need at a favorable price.

☞ **Retainer-like contracts with an engineer to perform studies or tests or to provide technical advice on engineering issues are subject to Chapter 30B.** Local governments sometimes contract with a firm to provide engineering expertise on a variety of issues that might arise over a period of time. Since the services are not in connection with a construction project, such a contract must be awarded under Chapter 30B procedures.

Other architectural and engineering contracts. If you contract for architectural, engineering, or other professional consulting services that do not relate to a specific construction project, the contract *is* subject to the requirements of Chapter 30B. For example, you must follow Chapter 30B in selecting an engineering firm to conduct traffic counts at every major intersection of your community if this traffic study is not being conducted in connection with a road construction or repair project. A contract with an engineering firm to operate and maintain a public facility such as a wastewater treatment plant is also subject to Chapter 30B.

Construction Contracts

Contracts for construction, maintenance, remodeling, and repair work on public works or buildings estimated to cost $10,000 or more are subject to the state's construction bid laws.

Contracts between $10,000 and $25,000. These contracts for construction work on public buildings or public works, or for construction materials may be awarded by following either M.G.L. c.30, §39M, or the *bid* procedures of Chapter 30B[77]; you may not issue a Chapter 30B RFP for construction services or construction materials. Examples of building-related projects that you may bid under Chapter 30B include heating, plumbing, roofing repairs, painting, weatherization, and installation of linoleum or wall-to-wall carpeting. Public works projects include maintenance and repair work on streets, roads, bridges, landfills, and water and sewer systems. Materials include plumbing and electrical supplies, paint, doors, and bituminous concrete.

The Chapter 30B bid procedures differ slightly from the Chapter 30, §39M, procedures: For example, Chapter 30, §39M, requires you to advertise the contract in the *Central Register*, whereas Chapter 30B does not. In addition, Chapter 30, §39M, requires you to obtain a bid deposit from the bidder totalling five percent of the bid amount; Chapter 30B does not.

Regardless of which law you use, you must comply with certain statutory requirements applicable to *all* contracts for construction-related work. Your contracts for such work must include the following provisions:

-- Wages and employment conditions: Your construction contract must contain various provisions relating to wages and employment conditions, including the payment of prevailing wages as set by the Department of Labor and Industries (DLI), hiring preferences for veterans and residents of Massachusetts, and worker's compensation coverage. (M.G.L. c.149, §§26-37). You must obtain the prevailing wage rates applicable to the project from the DLI in advance of the bidding process, and include the wage rates in the IFB. Appendix A includes information about contacting DLI.

-- Payment bonds: M.G.L. c.149, §29, requires you to obtain a payment bond in the amount of one half of the amount of the contract from the contractor for every construction project costing over $2,000.

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[77]M.G.L. c.30, §39M(d)(4).

The key requirements for each method of procuring construction services or materials totalling between $10,000 and $25,000 are presented below.

Construction or Materials Contracts
Totaling $10,000 to $25,000
Comparison of Procurement Methods

Requirement	**M.G.L. c.30B**	**M.G.L. c.30, §39M**
Competitive process	✓ bids	✓ bids
Advertising		
Office posting	✓	✓
Newspaper	✓ at least two weeks	✓ at least two weeks
Central Register	No	✓ at least two weeks
Bid deposit	No	✓ 5% of bid amount
Performance bond	No	No
Payment bond for construction contracts	✓ 50% of contract award	✓ 50% of contract award
Contractor prequalification	No	No
Prevailing wages	✓	✓

Contracts for more than $25,000. Public building construction contracts for more than $25,000 are governed by M.G.L. c.149, §§44A through H, which sets out detailed procedures, including contractor prequalification and solicitation of filed sub-bids. Contracts for public works construction or for construction materials must be bid under M.G.L. c.30, §39M.

CHAPTER 10
RESOLVING AND AVOIDING BID PROTESTS

Under Massachusetts law any bidder or proposer competing for a public contract can challenge the award of that contract in court on the grounds that the awarding authority did not comply with public bid laws.[78] It is our experience that most bid protests stem from a vendor's good-faith belief that the procurement process was illegal, unfair, or both. Regardless of whether a protest has merit, it is in your interest to resolve it quickly and fairly, to avoid litigation, and to award a contract with confidence that it will be legally valid.

This chapter is dedicated to helping you resolve -- or, better yet, avoid -- bid protests.[79]

Resolving Bid Protests

Vendors may bring bid protests to your jurisdiction or to our Office. In general, you should take any protest seriously, consider its merits, and work to resolve it quickly. The first section below provides advice on how to deal with protests lodged with your jurisdiction. The second section explains how we handle protests lodged with our Office.

Protests lodged with your jurisdiction

If you receive a protest before bids or proposals are due or if vendors have many questions, you should consider issuing an addendum. At this stage, you can correct the IFB or RFP, or clarify vague or ambiguous terms by sending a written addendum to every vendor. If you are not sure whether an addendum is called for,

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[78] See Quincy Ornamental Iron Works, Inc. v. Findlen, 353 Mass. 85 (1967).

[79] The term "bid protest" is used in this chapter to refer to a complaint raised by a vendor regarding the process used to award a contract under Chapter 30B, including an informal quotation process for a small contract, a sealed bid or proposal process for supplies or services, or a real property proposal process.

you may seek advice from your local CPO or our Office. By taking this action before bids or proposals are due, you may preserve your process and avoid a disputed award.

If you receive a protest after bids or proposals are opened and you are not sure whether it is valid, we recommend that you consult your CPO or our Office for an opinion *before* you sign a contract. By seeking assistance before executing a contract you keep your options open and may avoid costly litigation. At this stage, you still have the discretion to reject all bids or proposals if it is in the public interest to do so, or to reject a bidder or proposer that did not meet your requirements and award to the next best bidder or proposer.

If a vendor protests after you have executed a final contract, you will need to decide as quickly as possible whether the protest has merit, and if so, whether to take steps to halt the contract. If there were major deficiencies in the procurement process, the contract will be invalid and the contractor cannot legally be paid.[80] A decision either to halt the contract or to direct the contractor to proceed under the contract may have financial consequences, so it is important to establish solid legal ground for your decision. We recommend that you involve your local attorney if you have not already done so, and you may contact our Office for an opinion.

Protests lodged with the Inspector General's Office

We have developed an informal dispute resolution process to resolve protests as efficiently as possible without resort to litigation. A protest can be initiated by a phone call or a letter to this Office from a vendor at any time after an IFB or RFP has been issued.

Upon receiving a protest, we ask any vendor who has not yet brought the issue to the attention of the jurisdiction to do so. If the vendor cannot resolve the matter with the jurisdiction, our Office will review the protest for merit.

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[80] See M.G.L. c.16, §17(b).

If a protest is reasonable on its face, we will contact the jurisdiction to request documents or to seek clarification on how a decision was made. We can discuss the protest with the procurement officials, but the identity of any protester complaining to our Office is protected under our confidentiality rules.

When we have all of the necessary information we will determine whether, in our opinion, the process complies with Chapter 30B. We will inform the jurisdiction of our opinion before we discuss it with the protestor. To save time, we generally notify everyone concerned by telephone.

Whenever possible, we work with the jurisdiction to correct problems while preserving the process. If, for example, we determine before bids or proposals are opened that the specifications are inadequate or ambiguous, we will recommend that the jurisdiction issue an addendum extending the opening date and clarifying the specifications.

If we learn after bids or proposals have been opened that the process did not comply with Chapter 30B, we will discuss the legal basis for our opinion with the jurisdiction and lay out options for remedying the problem. If, on the other hand, we conclude that the protest is without merit, we will advise all concerned parties of our opinion that the contract can be awarded to the selected vendor.

We have found that in most cases an opinion from our Office will resolve a bid dispute. Most jurisdictions find that our Office serves as a useful arbiter in deciding whether to award a contract or reject bids and readvertise in the face of a protest. Most protestors who do not convince our Office will accept our opinion and drop the complaint.

The opinions given by our Office through this informal process, however, are not binding on either the jurisdiction or the protestor. A protestor is entitled to pursue his or her complaint in court even if our Office finds the protest to be without merit. A court may defer to our Office's expertise, but our opinion has no legal effect.

Ten Tips for Avoiding Bid Protests

In our years of hearing bid protests, we have learned that many protests can be avoided by paying attention to some straightforward rules. We offer the following 10 tips, which are all based on rules and recommended practices covered in this manual.

1. Make sure to follow the advertising rules. If you are all set to award a Chapter 30B contract that will cost more than $100,000, and you then discover that you forgot to advertise in the *Goods and Services Bulletin*, you will have to reject all bids and start over. Be sure you know the advertising requirements before you undertake any procurement because a failure to advertise cannot be waived.

2. Reject any sealed bid or proposal received after the deadline. If you need to make a change in the specifications or if you learn that vendors need additional time to prepare responses, you may issue an addendum *before the deadline* extending the due date. However, you may not accept a late bid or proposal, even if it is only a few minutes late.

3. Avoid proprietary specifications. Proprietary specifications require a particular brand-name product or have the effect of limiting competition to a supply or service which can be provided by only one particular manufacturer or supplier. Under Chapter 30B, you may not use proprietary specifications unless there is no other way to describe the supply or service you need.

There are a few kinds of contracts for which you can justify the use of proprietary specifications, such as software licenses or software maintenance agreements. For most supplies and services, however, it is possible to write specifications which allow for competition among vendors. If you use a brand name as a standard for performance or quality, be sure to explain that other brand names meeting this standard are acceptable.

We recommend that you review your specifications and eliminate or modify clauses that specify brand names. You should also be wary of specifications which describe equipment to an unusually high level of detail. Fire truck and ambulance specifications, for example, are sometimes so specific that they require bolts and screws to be a particular diameter. Often such details were inserted, not by the jurisdiction, but by a vendor who drafted "model" specifications to exclude competing companies.

If you believe that you are justified in using proprietary specifications, be sure to document your reasons in writing and be prepared to defend your decision if vendors protest.

4. Be sure to provide vendors with an adequate description of the supplies or services you need. Your specifications must provide vendors with enough information to give you a competitive bid or proposal. Consider the example of a town that solicited hourly rates for insurance consulting services, but did not provide a description of the tasks to be performed or an estimated number of hours for each task. One consultant submitted a price range of $50 to $150 per hour, while another bid a flat rate of $125 per hour. The town had no basis for determining which consultant offered the lowest price. In order to solicit genuine competition for this contract, the town must include a description of the tasks to be performed and an estimated number of hours required for each task.

5. Use clear, objective evaluation criteria. Regardless of whether you are seeking bids or proposals, you must let vendors know what standards you will use to judge their qualifications and their responses.

Consider, for example, using a contractor's experience as a minimum criterion. A school district seeking bids for school bus transportation wants to be sure that the contractor has adequate experience, and specifies as a minimum criterion five years of experience. The low bidder has five years of experience, but it consists of only one small contract, which does not approximate the size of the district's transportation

contract. The district is reluctant to contract with this vendor, but may be faced with a bid protest for rejecting a bidder that met the minimum qualifications. To avoid this dilemma, the district should use a strict, clear minimum standard: for example, that the firm and all of its key personnel must have a minimum of five years experience in satisfactorily performing school transportation for at least one municipality or school district with a contract similar in size and scope to the district's contract.

The use of clear standards as minimum criteria and -- in an RFP process, as comparative criteria -- helps ensure that you get the quality of supplies and services you expect and that you avoid protests from vendors.

6. Tell vendors up front how you will calculate the low bid price. This rule sounds simple, and usually it is. However, occasionally we get protests about solicitations that produce more than one "low bidder."

For example, if you solicit prices for a two-year, three-year, and four-year contract, you could get a different low bidder for each of these options. If your fuel oil solicitation allows bidders to submit either a fixed price or a price that fluctuates according to an index, it may well be impossible to determine which bid is the lowest. You cannot solicit prices on an array of different options and then decide after you have opened the bids which one you really want.

7. If you are purchasing multiple items in one solicitation, tell vendors how many contracts you will award. You may be able to save time and money by advertising for prices on an array of related items such as office supplies, cleaning supplies, or automotive parts in one bid. If you do, you must tell bidders in the solicitation whether you will award a separate contract to the low bidder for each supply or whether you will award one contract to the bidder with the lowest overall price.

8. Avoid the appearance of bid-splitting. Bid-splitting is intentionally dividing a purchase into two or more smaller purchases for the purpose of evading the requirements of a bidding law. This practice is illegal under Chapter 30B.[81]

In some circumstances, it makes good business sense to make small, frequent purchases and you should not hesitate to do so. Fresh produce, for example, is typically purchased this way because availability and price fluctuate widely. However, a jurisdiction that makes five separate purchases of $2500 personal computers from one vendor in a short period of time by informally soliciting telephone quotes is likely to create the impression that it is bid-splitting to avoid the $10,000 threshold.

If your jurisdiction makes small, frequent purchases from one vendor, be sure that you can justify the practice with a good business reason.

9. Play by your own rules. Sometimes vendors claim that the jurisdiction unfairly changed the rules of the competition after the bids or proposals were opened. Consider the example of a computer system RFP that specifies as a minimum criterion that the system must process a certain number of transactions per minute. None of the proposals received meet this criterion, so the jurisdiction decides after the fact to ignore the requirement because it seems impossible to meet.

Chapter 30B does not allow a minimum requirement to be waived after the fact when the effect would be to undermine fair competition. In this example, there may have been five proposers who submitted proposals in spite of the impossible standard, but there could well have been a dozen others who did not respond because they knew that their systems would not meet the standard.

10. Treat all vendors fairly. This rule almost seems too obvious to mention, but occasionally we receive protests from vendors who appear to have been subjected to different treatment than their competitors. For example, a jurisdiction requires bidders to submit at least three references to verify experience. The lowest bidder submits

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[81] M.G.L. c.30B, §11.

five references. The jurisdiction checks all five, and gets satisfactory reports from four; the fifth reference indicates that the vendor did not perform satisfactorily. The jurisdiction wants to reject the low bidder and award the contract to the second lowest bidder, after checking three references. The low bidder protests this unequal treatment. To avoid this situation, the jurisdiction could require vendors to submit references for all similar contracts within a set number of years, and state in the invitation for bids that the jurisdiction will randomly select three references to evaluate the low bidder's ability to perform. This rule makes it clear that the jurisdiction will check the same number of references for each competitor and avoid the appearance of favoritism.

Appendix A
Contracts Exempt from Chapter 30B

The following supply and service contracts are exempt from the requirements of Chapter 30B.

1. Public construction contracts subject to the provisions of M.G.L. c.30, §39M or M.G.L. c.149, sections 44A through 44J, inclusive. [M.G.L., c.30B, §1(b)(1).] See Chapter 9 for information on design and construction projects.

2. Public building design contracts subject to the provisions of M.G.L. c.7, §§38A½ - 38O, inclusive. [M.G.L., c.30B, §1(b)(2).] See Chapter 9 for information on design and construction projects.

3. Intergovernmental service agreement under the provisions of M.G.L. c.40, §4A. [M.G.L. c.30B, §1(b)(3).]

4. Agreements with the Commonwealth. [M.G.L. c.30B, §1(b)(4).]

5. Contracts for the purchase of materials, under specifications of the Massachusetts Highway Department, and at prices established by the Department, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of M.G.L. c.81 or M.G.L. c.90. [M.G.L. c.30B, §1(b)(5).]

6. Contracts for the advertising of required notices. [M.G.L. c.30B, §1(b)(6).]

7. An agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town. [M.G.L. c.30B, §1(b)(7).]

8. An agreement for the provision of special education pursuant to c.71B and regulations promulgated pursuant thereto. [M.G.L. c.30B, §1(b)(8).]

   This exemption applies to direct services delivered to children with special needs, such as transportation, counselling or education under an individual education program, as well as to any supplies used by children with special needs as part of an educational program. Other supplies and services, however, are not exempt simply because they are procured by the special education department. For example, office supplies or computers to be used for office administration would not fall under this exemption.

9. A contract to purchase supplies or services from any agency or instrumentality of the federal government, the commonwealth, or any of its political subdivisions. [M.G.L. c.30B, §1(b)(9).]

10. The issuance of bonds, notes or securities in accordance with procedures established by law. [M.G.L. c.30B, §1(b)(10).]

11. Contracts and investments made in connection with deferred compensation programs for employees in accordance with sections 57 or 57A of M.G.L. c.35 or sections 67 or 67A of M.G.L. c.44. [M.G.L. c.30B, §1(b)(11).]

12. A contract for the procurement of insurance or surety bonds, including an agreement subject to the provisions of sections 1 to 16, inclusive, of M.G.L. c.40M or sections 25E to 25U, inclusive, of M.G.L. c.152. [M.G.L. c.30B, §1(b)(12).]

    The procurement of an insurance contract is exempt from Chapter 30B. Contracts for insurance-related services, however, are not exempt. You must follow Chapter 30B to procure insurance consulting, claims administration, or third-party billing services.

13. Contracts for the services of expert witnesses for use in an adjudicatory proceeding or litigation or in anticipation thereof. [M.G.L. c.30B, §1(b)(13).]

14. Contracts or agreements entered into by a municipal gas or electric department governed by a municipal light board, as defined by section 55 of M.G.L. c.164 or by a municipal light commission, as defined by section 56A of c.164; provided, however, that any such board or commission may accept the provisions of this chapter by a majority vote of its members. [M.G.L. c.30B, §1(b)(14).]

15. Contracts with labor relations representatives, lawyers, designers, or certified public accountants. [M.G.L. c.30B, §1(b)(15).]

    This exemption applies only to services that could reasonably be restricted exclusively to labor relations representatives, lawyers, designers, or certified public accountants. Other service contracts are not exempt from Chapter 30B simply because you select a labor relations representative, lawyer, designer or certified public accountant to perform the service. For example, a contract to computerize your accounting system is subject to Chapter 30B even if you contract with a CPA firm. Similarly, a contract to operate a water treatment facility is subject to Chapter 30B even if you choose an engineering firm, because the contract is not for a design service.

Remember that contracts with architects and other designers that involve design work in connection with a building are subject to the designer selection law, M.G.L. c.7, sections 38A½ - 38O, inclusive. See Chapter 9 for more information on building design contracts.

16. Contracts with physicians, dentists, and other health care individuals or persons including nurses, nurses' assistants, medical and laboratory technicians, health care providers including diagnosticians, social workers, psychiatric workers, and veterinarians. [M.G.L. c.30B, §1(b)(16).]

    This exemption applies only to services that could reasonably be restricted exclusively to physicians, dentists, and other health care individuals. Other health care related service contracts are not exempt from Chapter 30B simply because you select a physician, dentist or other health care individual to perform the service.

17. A contract for snow plowing services. [M.G.L. c.30B, §1(b)(17).]

18. A contract or lease by a governmental body of its boat slips, berths, or moorings. [M.G.L. c.30B, §1(b)(18).]

19. A contract for retirement board services. [M.G.L. c.30B, §1(b)(19).]

20. A contract which is funded by proceeds derived from a gift to a governmental body or a trust established for the benefit of a governmental body. [M.G.L. c.30B, §1(b)(20).]

21. A contract for the towing and storage for motor vehicles. [M.G.L. c.30B, §1(b)(21).]

22. A contract to provide job-related training, educational or career development services to the employees of a governmental body. [M.G.L. c.30B, §1(b)(22).]

23. A contract pursuant to which a governmental body obtains services from a bank, as defined in section one of M.G.L. c.167, subject to the maintenance of a compensating balance. [M.G.L. c.30B, §1(b)(23).]

    Compensating balance contracts are subject to the provisions of section 53F of M.G.L. c.44 , and rules established by the state Department of Revenue.

24. A contract for ambulance service by a governmental body. [M.G.L. c.30B, §1(b)(24).]

    The procurement of ambulances is subject to Chapter 30B.

25. A contract to sell or lease industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority. [M.G.L. c.30B, §1(b)(25).]

26. A contract for the collection of delinquent taxes or for the services of a deputy tax collector. [M.G.L. c.30B, §1(b)(26).]

27. Contracts or agreements entered into by a municipal hospital or a municipal department of health. [M.G.L. c.30B, §1(b)(27).]

28. Contracts entered into by a governmental body on behalf of a hospital owned by such governmental body where such contract is funded by expenditures from an operations account, so-called, or an special account, established pursuant to a special act that is maintained for the benefit of and designated with the name of such hospital. [M.G.L. c.30B, §1(b)(28).]

29. Contracts, agreements, or leases entered into by a municipal airport commission established under the provisions of section 51E of M.G.L. c.90, provided, however, that such contracts, agreements or leases apply to aviation uses or the sale of aviation fuel. [M.G.L. c.30B, §1(b)(29).]

30. A contract for the collection, transportation, receipt, processing, or disposal of solid waste, recyclable or compostable materials. [M.G.L. c.30B, §1(b)(30).]

    The Massachusetts Appeals Court has determined that the operation of a municipal landfill is a public works construction project, subject to M.G.L. c.30, section 39M. (Department of Labor and Industries v. Town of Pepperell & Another, unpublished decision, 87-665 and 87-780.)

31. An agreement for the purchase of photography services entered into by a public school. [M.G.L. c.30B, §1(b)(31).]

Appendix B
Using State Contracts

The Department of Procurement and General Services periodically provides to local procurement officers information on *statewide contracts* and the availability of *state and federal surplus property*.

The following pages demonstrate the variety of products available through the statewide contracts as of March 3, 1995. If you have questions about use of the contracts, check first with your Chief Procurement Officer. If your jurisdiction does not have a CPO or you need additional information, contact DPGS.

Department of Procurement and General Services
Collective Purchasing Bureau
One Ashburton Place
Boston, MA 02108-1552

Telephone: (617) 727-7500
TDD: (617) 727-2716
Fax: (617) 727-4527

03-Mar-95

	Commodity	Bid #	Sent	Expires	Extension Info, Sole Vendor & phone #
	Air Conditioners, Wall & Window Mount	A4018	Call	10/24/95	
*	Aluminum Foil	A5001	Mar-95	03/10/96	
	Ammunition also see Weapons & Ammo				
	Antifreeze/Coolant	E524A	Info	10/29/95	Call Draper Energy Co. (603) 654-6400
	Audiovisual Equipment (also see Film)	A5286	Sep-94	07/14/95	
	Auto Parts - O.E.M. Vendors	E1082	call	05/06/96	
	Auto Parts - Local Vendors	E4083	call	05/06/96	Local Vendors by District
	Baked Goods (Bread, Rolls Muffin,etc)	G4xx8	Sep-93	06/30/95	Call Bouyea-Fassette, 800-678-2867
	Battery, Automotive & Storage	E4027	Jul-94	05/31/95	
	Battery, Flashlights & Bulbs	A2074	May-92	03/31/95	Extend 3/30/94 Kaufman Co.-(617)491-5506
	Battery, Nickel-Cadmium (NiCad)& Chargers	A3016	Sep-93	09/11/95	Extended 7/08/94
	Blanket, Bedspread, Diaper Cloth	C4020	call	02/28/95	
*	Body Armor Vests	C5911	Feb-95	12/31/96	
	Boxes, Corrugated Ship & Storage, Recycled	A5133	call	08/29/95	
	Breath Analyzers	A4055	Mar-94	03/29/95	
	Breathing Apparatus	A3046	Feb-94	01/11/95	
	Brooms & Mops MA Comm for the Blind	M1001	info	06/30/95	Ferguson Ind 617 727-9840, 800 392-6450
	Calcium Chloride, Liquid	E4A14	Dec-93	10/24/95	All States Asphalt (MA) 800 343 9620
	Calcium Magnesium Acetate - road use	E4A13	Dec-93	10/30/95	CRYOTECH 800 346 7237
	Calculators	B4029	Jun-94	07/15/95	
*	Camping Equipment	C5517	Info	02/28/96	Call American Surgical (305) 888-9958, Phillip Lelo
	Carpet, Tiles & Broadloom	B5041	Jan-95	11/13/95	
	Caustic Soda, Bulk Delivery	F4122	Sep-93	06/21/94	E&F King Norwood 617 323-4150 $.93/gal
	Composting Bins (Home)	A3056	May-93	04/15/95	Rev 1- Extended 4/26/94
	Computer Paper, Continuous Tab Stock	I5505	Jun-94	05/29/95	
	Computer Supplies DEC Equipment only	B3050	Sep-93	05/02/95	Call Leighton & Assoc.(508) 356-3235
	Computer (Microcomputer)	BITA	Sep-94	05/01/98	Call vendors listed on the BITA summary
	Concrete, Bituminous, Winter Mix	E3A17	Feb-93	01/06/94	Permanent
	Concrete, Bituminous (Ashpalt)	E5018	Jan-95	01/06/96	
	Concrete, Rapid Set	E5043	Info	09/29/95	Call A.H. Harris (617) 329-4250 $15.85/50Lb.bag
	Construction Material (Steel)	A4007	Jan-94	06/16/94	
	Cups, Food Containers & Supplies	A3045	Aug-93	04/13/95	Rev 2-Extended 3/30/94
	Decals & Stickers	M7016	info	05/01/98	MCI Industries Walpole 800-222-2211
	Diary, Lawyer	B3036	Sep-93	09/01/95	Call vendor 800-444-4041, $35 each
	Dishroom Supplies & Equipment, Metals	A3044	Aug-93	06/08/95	Extended 4/15/94
	Dishwasher Detergents & Supplies	A4068	May-94	05/05/95	
	Drugs/Medicine/Hospital Suppplies	Dxxxx	info	05/01/98	Sent out on seperate "Medical" mailing

*	Duplicators "Digital Duplicators"	I5205		01/31/96	
	Electric Fans	A5024	Info	10/31/95	Call Branch Electric Supply (800) 698-4466
	Electric Motors	A4066	Mar-94	03/01/96	Blanchard Electric (800) 244-5122
	Electrical Supplies	A5022	Jan-95	12/18/97	
	Engines: Remanufactured Caterpillar	E1069	Aug-91	04/30/94	Extend 4/30/92 Southworth 508 634-5537
	Envelopes, Plain & Printed	I4507	Apr-94	03/27/95	DROP BGH INTERNATIONAL CONSULT.
	Fax, plain paper (Mid/High Volume)	I2202	Jul-94	06/30/95	Extended 7/15/94
	Fax, plain & thermal paper(Low Volume)	I4202	Jul-94	06/30/95	Extended 7/15/94
	Fertilizer-Farm,Garden,Lawn Chemicals	F4045	Apr-94	03/29/95	
	Film, Audio/Video Tapes & Supplies	A4129	Apr-94	03/18/95	
	Filters, Air - all HVAC applications	A4018	Mar-94	04/14/95	Environmental Filter Corp.(617)932-4643
	Fire Extinguishers	A5A37	Info	10/31/95	Call Fire Fighting Equip.(413) 283-8474
*	First Aid Items, Emergency	D5S16	Call	02/28/97	
	Flags & Accessories	MCI	info	05/01/98	MCI Industries Walpole 800-222-2211
	Flexible (Floppy) Disks	B3043	Oct-93	03/31/95	Extended 8/29/94
	Floor Machines	A2003	Aug-92	07/14/94	Extend only Custom Chemical from 7/15/93
	Flowers, Mulch, Trees, Loam	A3907	Aug-93	09/15/94	Northeast Nursery, Peobody (508)535-6550
	Food Service Equiptment	A4070	May-94	05/08/95	Temp-Tech Co.(800)343-5579
	Fuel: Diesel Oil (not #2 Fuel Oil)	F340#	Jan-93	12/02/93	# = Zone 1 thru 8
	Fuel: Distellate Oil #2	F503#	info	07/31/95	# = Zone 1 thru 8
	Fuel: Residual Oil #4 & #6	F4025	Sep-93	06/30/94	for cost comparison purposes only
	Fuel: Unleaded Gasoline, 3 Octanes	F320#	Jun-93	04/30/94	
	Furniture, Chair secretary/ergonomic	M1054	Feb-92	08/23/94	Hampden Cty Jail (York Ind.)413 781-2224
*	Furniture, Chairs, General Office	B5040	Feb-95	12/17/95	
	Furniture, Metal Office	B4041	May-94	04/12/95	
	Furniture, Modular/Tubular/Ergonomic	M0018	info	05/01/98	MCI Industries Walpole 800-222-2211
	Furniture, Residential	A3082	call	06/27/95	Extended 3/30/94
	Furniture, Stack Chairs, Fold Table	B4027	Mar-94	04/01/95	
	Gas, Industrial (Minority)	F4818	Info	11/14/94	Call: Medical Tech. Gases (617) 395-1946
	Gas, Medical - Cylinders (Minority)	F4819	Info	11/14/94	Call: Medical Tech. Gases (617) 395-1946
	Gas, Oxygen Bulk (Truck) Delivery	F3020	May-93	02/27/95	Call first:WESCO(Fred Manley)617 272 0400
	Gas, Propane, Delivery Charge	F5017	call	09/29/96	
*	Gas, Refrigerant, Freon	F5012	call	12/30/95	Call Refrigeration Sales 800 221 0603
	Germicides & Disinfectants	D4008	call	01/31/95	Also sent out in medical mailing
	Gloves, Disposable, Medical	D4001	call	03/31/96	Also sent out on Medical Mailing
	Hardware & Fastners	A3057	Nov-92	11/02/95	Extend 9/15/94
	Hay & Straw	G4540	Dec-93	11/30/94	
	Heat Transfer Fluid, Ethlyne Glycol	F2013	May-92	12/16/93	Extend 12/16/92 $294.25/Drum 800-777-2466
	Ice Melting - sidewalk, 50 lb bags	E5025	Info	10/25/95	Call Jackson Lumber (508) 689-1056
	Institutional/Housekeeping Supplies	A3051	Jul-94	07/29/95	

Kitchenware & Accessories	A4052	Jun-94	05/04/95	
Labels, Assorted	B4048	info	04/07/95	N.E. Office Supply, 617-242-8800
Ladders: Wood, Fiberglass, Aluminum	A5032	Oct-94	10/13/95	
Lamps, Stage, TV & Audiovisual	A4019	call	09/16/95	Call Phase One Office Prod. 617-547-0700
Lamps & Ballasts,Incandsnt, Fluorscnt	A2091	Aug-93	03/31/95	Extend 2/11/94 800-696-9933, Rev 4
Laundry Chemicals	A5909	call	06/21/95	Call Sidney @ Diversey Corp. (800) 248-1778
Laundry Supplies	A5015	call	09/19/95	
Limestone, Ground	A3013	Aug-93	07/31/94	Lee Lime 413 243 0053
Lockers/Metal Storage Products	A4027	Dec-93	01/23/96	Extended 1/20/95
Locks & Acccessories	A4050	Call	07/19/95	
Lubricants & Oils	F3101	Jun-93	04/30/95	Extended 4/94, Drop Schultz Lubricants
Lumber, Wall & Hardboard & see Plywood	A5104	Call	10/19/95	
Magnetic Tape, Electronic	B4047	Feb-94	01/13/95	M&M Automated (800) 238-0033
Matresses, Bedding, Beds	M7004	info	05/01/98	MCI Industries Walpole 800-222-2211
Metal/Paper Plates & Chemistry	I450C	Call	03/09/95	
Microcomputer Equipment - PC's	BITA	Sep-94	05/01/98	Call vendors listed on the BITA summary
Micrographics Readers & Printers	B3046	DROP	01/10/94	Award will not be renewed
Microwaves see Refrigerators	A		REFERENC	
Mopping Equipment & see Institutional	A5038	Info	10/31/95	Edison Chemical 617 442 0270
MSA: Airfare Agreement (Northwest)	n/a	Mar-94	08/15/94	Prices firm till 8/15/94
MSA: Auditing of Utility Bills	ST3T091	Oct-93	01/24/96	Master Service Agreement
• MSA: Courier Service	ST3J29	call	02/21/95	Mass - ST3J291, Worldwide-ST3J292 -Ext.1/9/95
MSA: Labor Arbitration Services	ST2H051		Expired	
MSA: Micrographic Services	ST5-H311	call	08/23/95	Anacomp, Medford call 727-7500 ext 307
MSA: Temporary Clerical Help	ST3J461	call	06/30/95	Master Service Agreement DPGS Memo 93-3
• MSA: Training; Human Resource Dev	ST3J501	call	02/28/95	Master Service Agreement (MSA)
Nails	A4086	Jun-94	06/02/95	
Needles & Syringes, Disposable	D4034	Oct-93	08/31/95	
Office Supplies - specific items only	B2082	call	03/31/95	Extended, Call MacIsaac 617 821-4900 x296
Paging Devices (Beepers)	AA005	Info	07/15/96	Call Poly@MobleMedia (617)562-3202or787-2800
• Paint Can Storage Cabinet	A5008	Info	12/13/95	Call Lewis-Boyle Inc. 617-890-7950, $511./E
Paint, Pavement Marking Materials	E4038	Info	05/31/95	Call Franklin Paint Co. (800) 486-0304
Paint, Recycled	A3059	Jun-93	04/20/95	Call The Green Paint Co., Inc. 800 527 8866
Paint Brushes	A3012	Sep-93	08/26/95	Extended 5/94
Paint & Maintenance Supplies	A4031	Feb-94	02/10/95	
Paint/Thinner	A3017	Dec-93	11/17/95	Extended, Drop : Ashmont Supply & Grossmans
Panel, Open Office Plan	B3031	Aug-93	07/25/95	Extended 5/94
Panel, Open Office Plan MCI	M7017	info	05/01/98	MCI Industries Walpole 800-222-2211
Panel, Open Office Plan,Remanufactured	B2049	call	09/24/94	extended 8/9/94
Paper Stock, Recycled	I5506	Aug-94	10/15/95	Rev 1: No price increasel Drop vendor RIS

COLLECTIVE PURCHASING BUREAU: INDEX OF CURRENT STATEWIDE CONTRACTS(617) 727-7500 x 245

Paper Products & Dispensers RECYCLED	A3043	May-93	04/06/95	Rev 3-Extended 5/94- A4043 Runs concurrently
Paper Shredder	B4022	Jan-94	01/04/96	Call CPB for a copy
Particle Board, Laminated	A3129	call	05/19/94	Vendor Requires min 40,000 pound order
* Partitions, Demountable Wall System	B4032	Feb-95	11/15/95	
Partitions, Interior Office	B2812	May-92	04/08/95	Extended 5/94
Pavement Tape, Reflective	E9052	Oct-92	10/01/93	Extend 3/1/92 (aka E1052)
Photocopy Equipment (MSA)	2L009	Dec-93	12/31/94	Master Service Agreement Extended 12/5/94
Photocopy Supplies	I460A	Dec-93	12/31/94	Extended 12/5/94
Photocopy/Repro Engineering Services	I4500	Jun-93	05/09/95	Extend 5/94, Drop Strato, Applied & Super
Plastic Film, PVC Foodwrap	A5033	Info	08/14/95	Call Bay Colony Paper (800) 649-4393
Plastic Sheets, Plexiglass & Lexan	A4061	Feb-94	02/26/95	
Plow Blades	E4040	Info	02/20/95	Call Valk Mfg. Co. (717) 766-0711
Plumbing Supplies	A2080	May-92	04/14/95	Standard of Lynn-800-325-3351 Extended 7/15/94
Plywood & see Lumber & Particle Board	A4058	Apr-94	04/15/95	Curtis-Newton, Dedham 617 361-6000
Polyethelene Liner Bags, all types	A5085	Info	08/22/95	Call: Dowd Co. (617) 935-8920
Press/Bindery/Shipping Suppls	I450E	Call	03/09/95	
Press Blankets	I450D	Call	03/09/95	
Printing: Letterhead, Business Cards	MCI	info	05/01/98	MCI Industries Walpole 800-222-2211
Printwheels & Printer Ribbons	B3038	Sep-93	08/18/95	Extended 6/14/94
Radio, Motorola Intrac 2000	A0663	Feb-91	12/31/93	Extend 12/31/91 Motorola 617 736-1200
Radio, Security Radio Equipment	A2911	call	01/20/95	Motorola 617 736-1200 & 800 458-5184
Radio, 800mhz Voice Radio System(RFP)	A7661	call	12/30/94	Motorola 617 736-1200 & 800 458-5184
Recycling Set Out Containers	B5910	Info	11/27/95	Call Plasican Inc. 508-537-4911
Reflective Sheeting for RMV plates	E4052	call	05/31/94	3M Saint Paul MN
Reflective Sheeting - signs	E1050	call	08/30/94	Extend 5/31/92 call CPB for a copy
Reflective Sheeting -RMV stickers	E1053	call	05/31/94	Extend 5/31/92 Bid opened 10/18/93
Refrigerators & Microwave	A4030	Dec-93	01/23/96	
Re-upholster Chairs & Furniture	MCI	info	05/01/98	MCI & Hampden Cty Jail 413 781-2224
Rope	A3011	Sep-93	09/09/94	Albeco Fasten W Newton 617 965 8840
Rubber Mat Natural/Synthetic Rubber	A3026	Sep-93	10/31/95	Alcada Co,MA 800-852-2345 617 787 8874
Rubber Stamps, Various	B4016	Info	09/09/95	Call Bloss Rubber Stamp, (800) 870-4225
Sand for Snow & Ice Control,Truckload	E4A11	Dec-93	12/01/95	Extended Oct. 94
Scouring & Cleaning Supply-Pad&Sponge	A5025	Info	10/31/95	Call Jarol Co. (617) 769-0431
Shelving For High Density Filing	B3028	call	09/30/95	Extend 6/30/94 Call CPB for copy
Sign Blanks, Aluminum	E3034	Jun-93	05/14/95	
Sign Supports (Galvanized)	E4037	Info	05/15/95	Call L&C Flashing Barricades (617) 828-3481
Signs, Aluminum	M7009	info	05/01/98	MCI Industries Walpole 800-222-2211
* Sludge Preventative - #4 & #6 Fuel Oil	F4007	Dec-93	10/24/95	Economy Lube 508 532 6161 $209/55 gal
Soap, Liquid Hand & Cake	A4077	Mar-94	04/21/95	
Sodium Chloride, Road Salt-Truckload	E4A12	Dec-93	11/14/95	

Sodium Cl-Calcium Chloride PreMix 4:1	E4A21	Dec-93	11/14/95	Akzo 800 752 7258
Software, BITA update sent quatlerly	BITA	Sep-94	04/13/98	
Software Support,Application & Systems	10145-3	Aug-93	12/09/94	
Surge Supressor	B3131	Sep-93	10/21/95	Call Blanco (800) 292-6625, extended 8/9/94
Survey Stakes	E5042	Info	11/30/96	Call A.H.Harris & Sons, Inc. 508-359-7321
Storage Sheds, Wooden	A5007	Info	12/13/95	Call Custom Shed Designs 508-764-2900
Stripping/Plate Making	I450B	Call	03/09/95	
Tableware, Plastic	A4046	Mar-94	03/31/95	
Tableware, Stainless Steel	A4021	Dec-93	11/04/95	Royal Co (804) 855 6004, Extended 8/19/94
Tabulating Cards	B3018	call	12/03/93	White Arts Inc, Indiana, 800 968-2271
Targets on recycled paper	A5063	Info	05/31/95	Call AAA Police Supply (617) 326-8845
Tax Forms W-2,1099 Customized/Special	I1009	Aug-93	08/31/94	DROP
Tax Forms (W-2,1099) Standard Forms	I4501	Aug-93	07/29/95	Apply % discount to vendor catalogues
Telecommunications Equipment see BITA	BITA	Sep-94	04/13/98	
Telephone Device for the Deaf	A3014	Aug-93	08/20/95	Segler 508 428 2448 Extended 6/14/94
Tires (Auto,Equipment,Farm) & Tubes	E4049	Jan-94	12/02/95	Extend 12/94
Toner Cartridges, Laser Printer	B4042	Dec-93	11/04/95	Rev 01 sent Feb. 1994, Extended 8/29/91 Rev 02
Toner Laser Jet Cartridges	B3813	Aug-93	11/04/93	Resent August 93 with Rev 1 & 2
Tools, Electric & Bench Machinery	A4042	Apr-94	04/05/95	
Tools, Garden	A406A	Jun-94	05/23/95	
Tools, Hand & Pneumatic	A4048	May-94	05/01/95	
Towels (Cloth)	M8060	info	12/24/94	MCI Industries Walpole 800-222-2211
Trucks, Recycling, Curbside	E3185	Jun-93	01/10/94	Nat'l Recycling (RI) 800 766 5007
Typesetting & Drkrm Suppls	I450A	Call	03/09/95	
Typewriter Ribbons	B5013	Call	12/24/95	Call G.A. Blanco & Sons (800) 292-6625
Typewriters	B4014	Apr-94	04/07/95	
Vacuums, Dry & Wet/Dry	A4049	Apr-94	04/07/95	
Washers & Dryers,Commercial Lease/Buy	A3009	call	08/24/95	Automatic Laundry @ 617 969 4340 Extended
Waste Oil Pick-up, all zones	F4A03	Oct-93	09/29/94	
Water, Bottled & Equipment	G5881	Call	09/30/95	Extend 9/30/93 Rev 1 added cups (FEB 93)
Water/Sewer Treatment Chemicals	F3021	Aug-93	02/15/94	Being sent out for rebid
Weapons & Ammunition	A5053	Call	09/12/95	
Window Glass	A3060	Feb-93	DROP	Award will not be renewed
Wipes: Wet Wipes, Disposable Paper	A3001	May-93	03/31/95	Jarol, Westwood 617 7694531, 800 9554415
Wiping Rags, Disposable	A4010	Sep-93	08/18/95	Beacon, Chelsea 617 884 5304, Extended 8/94
Writing Instruments (Comm for Blind)	M2002	May-92	05/01/98	Mass Industries for Blind 800-392-6450

Appendix C
Sample Forms

This appendix contains copies of the sample forms mentioned in this manual.

Form	Page
Chief Procurement Officer's Delegation of Procurement Powers and Duties	C-3
Certificate of Non-collusion	C-5
Secretary of State's *Goods and Services Bulletin* Advertisement Forms	C-7
General Information	C-7
General Form	C-9
Secretary of State's *Central Register* Advertisement Forms	C-11
General Information	C-11
Designer Services (Form CR1)	C-12
General Contracts (Form CR2)	C-13
Acquisition or Disposition of Real Property (Form CR3)	C-14
Contract Award (Form CR-4)	C-15
Persons Receiving Bidding Documents (Form CR5)	C-16
Unique Real Property Acquisition	C-17
Emergency Real Property Acquisition	C-19
Disclosure of Beneficial Interests in Real Property Transaction	C-21

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Instructions
Chief Procurement Officer's
Delegation of Procurement Powers and Duties Form

Chapter 30B, section 19, of the General Laws authorizes the Chief Procurement Officer (CPO) of a governmental body to delegate procurement powers and duties to other employees of the governmental body. The CPO has great discretion in making a delegation -- it can be very specific and limited, or very broad.

Keep in mind that you may only delegate powers you legally have under Chapter 30B and other applicable statutes, rules, regulations, charters, ordinances, or bylaws. For example, where statutes or other rules require that a contract be approved by the mayor, city council, board of selectmen, or school committee, such final approval is not the CPO's to delegate.

You must complete and sign one delegation form for each delegation of powers and duties, and for each subsequent amendment or revocation of an original delegation. Step-by-step instructions are listed below.

Step

1. Check the appropriate box. If you are amending or revoking a previous delegation, enter the ID number shown on the original delegation form returned to you by the Office of the Inspector General.

2. List the full name, official title, department, office address and office telephone number of the person to whom you are making this delegation.

3. Check as many boxes as apply. If you wish to delegate powers and duties in addition to, or other than, those listed on the form, check "Other" and specify the powers and duties you are delegating in an attachment.

4. Check as many boxes as apply. If necessary, list additional departments or contracts in an attachment. If you wish to restrict the delegation in some way other than those listed on the form, check "other" and specify the procurements to which this delegation pertains in an attachment.

5. Check as many boxes as apply. If you wish to impose requirements not listed on the form, check "Other" and specify the requirements in an attachment.

6. Enter the expiration date, if any. If there is no scheduled expiration date, enter "Not Applicable."

7. Enter the name of your governmental body.

8. Sign and date the delegation form. List your name, official title, department, office address and office telephone number.

9. Send the original of this form to the Office of the Inspector General at the address provided on the bottom of the form.

No delegation or subsquent amendment or revocation of an original delegation shall take effect until the original of this form has been received by the Office of the Inspector General. Upon receipt, the Office will date-stamp the form, assign an ID number, and return the original form to the CPO. A copy will be retained in the Office's file.

Chief Procurement Officer's Delegation of Procurement Powers and Duties

(Type or print legibly)

ID #: (To be filled in by OIG)

1. ☐ Original Delegation ☐ Amendment* ☐ Revocation* *ID #: _____

2. Pursuant to the provisions of G.L. Chapter 30B, section 19, I hereby delegate the powers and duties set forth below to:

Name _____
Title _____
Department _____
Office Address _____
_____ Zip _____
Office Telephone ( ) –

3. I hereby delegate the following Chapter 30B powers and duties with respect to the procurements specified herein:

☐ Solicit ☐ Open ☐ Evaluate ☐ Award ☐ Reject/Cancel
☐ Exercise options ☐ Increase quantities ☐ Maintain records
☐ All of the above ☐ Other (specify in an attachment)

4. This delegation pertains to procurements:

☐ for the following department(s): _____
☐ for the following contract(s): _____
☐ other (specify in an attachment)

involving: Supplies Services

☐	☐	under $1,000 (no solicitation required)
☐	☐	from $1,000 to $9,999 (telephone quotes)
☐	☐	$10,000 and over using ☐ bids ☐ proposals
☐	☐	emergency procedures

5. This delegation is conditioned upon compliance with G.L. c.30B, all applicable statutes, rules, regulations, charters, ordinances, or bylaws, and subject to the following additional requirements:

☐ Final approval of award by Chief Procurement Officer
☐ Approval of all documents by Chief Procurement Officer prior to issuance
☐ Other (specify in an attachment)

6. This delegation shall remain in effect until revoked or amended. Otherwise, this delegation shall expire on: _____.

7. I hereby certify that I am the Chief Procurement Officer of: _____

8. Signed _____ Date _____
Name _____
Title _____
Department _____
Office Address _____
_____ Zip _____
Office Telephone ( ) –

9. Send the original of this form to Office of the Inspector General, 1 Ashburton Place, Rm 1311, Boston, MA 02108. No delegation, amendment or revocation shall take effect until it is received by the Office of the Inspector General.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

_____
(Name of person signing bid or proposal)

_____
(Name of business)

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Advertisements in the

Goods and Services Bulletin

Phone: (617) 727-9136

DEADLINE: 4:00 P.M. WEDNESDAY

Chapter 30B requires that an advertisement be published in the *Goods and Services Bulletin* at least two weeks prior to the deadline for receipt of bids or proposals for any contract in the amount of $100,000 or more. The advertisement must also be published in a newspaper of general circulation.

Chapter 30B also requires publication of a notice in the *Goods and Services Bulletin* at the earliest possible date for every emergency procurement which requires a waiver of Chapter 30B requirements.

The *Goods and Services Bulletin* is published every Monday including holidays. The deadline for receipt of submissions to the bulletin is Wednesday at 4:00 p.m. for publication on the following Monday. There is no charge for publishing advertisements or notices.

Advertisements and emergency notices should be typed on the forms on the following pages and submitted by:

FAX: (617) 742-4822 or **MAIL:** *Goods and Services Bulletin*
Regulations Division
Room 2A, One Ashburton Place
Boston, MA 02108

GOODS AND SERVICES BULLETIN ADVERTISEMENT FORM

AWARDING AUTHORITY: ☐

AGENCY:	BID NUMBER

CONTACT INFORMATION:

NAME:	TITLE:	PHONE

ADDRESS:	CITY/TOWN:

DESCRIPTION:

CONTRACT INFORMATION:

ESTIMATED RATE:	DURATION OF CONTRACT:	BID RELEASE DATE:	BID DEADLINE DATE:	BID DEADLINE TIME:

ADDITIONAL INFORMATION

AWARDING AUTHORITY: ☐

AGENCY:	BID NUMBER:

CONTACT INFORMATION:

NAME:	TITLE:	PHONE:

ADDRESS:	CITY/TOWN:

DESCRIPTION:

CONTRACT INFORMATION:

ESTIMATED RATE:	DURATION OF CONTRACT:	BID RELEASE DATE:	BID DEADLINE DATE:	BID DEADLINE TIME:

ADDITIONAL INFORMATION

GOODS AND SERVICES BULLETIN ADVERTISEMENT FORM

AWARDING AUTHORITY:

AGENCY:	BID NUMBER

CONTACT INFORMATION:

NAME:	TITLE:	PHONE:

ADDRESS:	CITY/TOWN:

DESCRIPTION:

CONTRACT INFORMATION:

ESTIMATED RATE:	DURATION OF CONTRACT:	BID RELEASE DATE:	BID DEADLINE DATE:	BID DEADLINE TIME:

ADDITIONAL INFORMATION

AWARDING AUTHORITY:

AGENCY:	BID NUMBER:

CONTACT INFORMATION:

NAME:	TITLE:	PHONE:

ADDRESS:	CITY/TOWN:

DESCRIPTION:

CONTRACT INFORMATION:

ESTIMATED RATE:	DURATION OF CONTRACT:	BID RELEASE DATE:	BID DEADLINE DATE:	BID DEADLINE TIME:

ADDITIONAL INFORMATION

eadline Tues. 4:00pm

CENTRAL REGISTER
One Ashburton Place, Room 2A Plaza Level
Boston, MA 02108
(617)727-9136 FAX (617)742-4822

me Questions and Answers About the Central Register

hat must be advertised in the Central Register?

contracts estimated to cost $10,000 or more for construction, reconstruction, renovation, demolition, or the repair d maintenance of public property in the Commonwealth. This includes a wide diversity of contracts from new nstruction, roofing, and painting, to supplies and furnishings incident to the design of a public facility. The proposal hire the services of an architect, planner, engineer or construction supervisor must be advertised when the completed st of a project is estimated to be over $100,000. The acquisition or disposition of real property that consists of more an 2,500 square feet must also be advertised. In addition to the invitation to bid or to submit proposals, a public thority must publish the names of firms that obtain bidding documents, and also must publish the contract award. ere is no cost for advertising in the Register.

hat should be submitted to the Central Register?

original or clearly reproduced Central Register form with all relevant information typed neatly. Remember that the m the Central Register receives from you will be reproduced thousands of times for Register users around the state d therefore must be typed clearly.

hen should notices appear in the Central Register?

e law requires that both the Designer Services (CR1) and the General Contracts (CR2) notices be published in the gister at least two weeks prior to the deadline for proposals or the general bid opening. The Register is published ery Wednesday. The deadline for each issue is Tuesday of the preceeding week (eight days before publication). ere are no exceptions to the Tuesday (4:00 p.m.) deadline, the Wednesday publication date, or the two week notice quirements.

ow should I mail my notice to the Central Register?

rly! Missing the Tuesday deadline may require rescheduling bid opening dates and create other logistical problems. low at least four working days by regular mail. We suggest overnight delivery services if you are not sure the notice ill arrive on time. We discourage the use of certified or registered mail which frequently delays receipt. If you require oof of delivery send an extra copy of the form with a self-addressed stamped envelope. If you have access to a lephone Facsimile machine (usually referred to as FAX), you can send the Register forms to the Secretary's FAX. The mber is (617)742-4822. Do not wait until the last minute to FAX Register forms as you may not get through.

hen am I required to have a prequalified contractor or designer?

ojects that cost over $25,000 must use a contractor qualified by the Division of Capital Planning and Operations. hen the completed cost of a project is over $100,000 you must use a licensed architect, designer or engineer. Public orks projects that cost over $50,000 must use a contractor qualified by the Mass. Highway Department.

CR1 CENTRAL REGISTER - DESIGNER SERVICES

Public projects when the construction cost is estimated to exceed $100,000. Published two weeks prior to application deadline.

AUTHORITY
agency, municipality or district;
contact person, address and telephone

PROJECT

PROJECT PROGRAM AVAILABLE *where and when*

ESTIMATED CONSTRUCTION COST

TIME PERIOD FOR COMPLETED PROJECT

BRIEFING SESSION *where and when*

SCOPE OF WORK

SPECIFIC DESIGNER SERVICES

___ Architect ___ Landscape Architect
___ Engineer ___Land Surveyor
___ Planner ___Programmer
___ Space Planner ___Project Manager

DESIGNER'S FEE

___Set *specify amount*
___Negotiated

ADDITIONAL INFORMATION

DEADLINE FOR APPLICATION FORM
date and time

CR1 CENTRAL REGISTER - DESIGNER SERVICES

Public projects when the construction cost is estimated to exceed $100,000. Published two weeks prior to application deadline.

AUTHORITY
agency, municipality or district;
contact person, address and telephone

PROJECT

PROJECT PROGRAM AVAILABLE *where and when*

ESTIMATED CONSTRUCTION COST

TIME PERIOD FOR COMPLETED PROJECT

BRIEFING SESSION *where and when*

SCOPE OF WORK

SPECIFIC DESIGNER SERVICES

___ Architect ___ Landscape Architect
___ Engineer ___Land Surveyor
___ Planner ___Programmer
___ Space Planner ___Project Manager

DESIGNER'S FEE

___Set *specify amount*
___Negotiated

ADDITIONAL INFORMATION

DEADLINE FOR APPLICATION FORM
date and time

C2 CENTRAL REGISTER - GENERAL CONTRACTS

blic contracts that are construction related and estimated to exceed $10,000. Published two weeks prior to general bid ening.

THORITY

ncy, municipality or district: contact on, address and telephone

PROJECT

ANS/SPECIFICATIONS AVAILABLE

e, date and time

ESTIMATED COST

CONTRACTOR QUALIFICATION

required for contracts over $25,000

Contractor Category:
DCPO certificate ☐ or
Mass Highway ☐

ED SUB BID CATEGORIES

B BID DEADLINE

GENERAL BID DEADLINE

date and time

DITIONAL INFORMATION

2 CENTRAL REGISTER - GENERAL CONTRACTS

blic contracts that are construction related and estimated to exceed $10,000. Published two weeks prior to general bid ening.

THORITY

ncy, municipality or district: contact on, address and telephone

PROJECT

ANS/SPECIFICATIONS AVAILABLE

e, date and time

ESTIMATED COST

CONTRACTOR QUALIFICATION

required for contracts over $25,000

Contractor Category:
DCPO certificate ☐ or
Mass Highway ☐

ED SUB BID CATEGORIES

3 BID DEADLINE

GENERAL BID DEADLINE

date and time

DITIONAL INFORMATION

CR3 CENTRAL REGISTER - ACQUISITION OR DISPOSITION OF REAL PROPERTY

The proposed sale, rental, acquisition or disposition of public property which is 2,500 sq. ft. or more. Must be published 30 days prior to the proposal deadline.-

AUTHORITY

DESCRIPTION OF PROPERTY

PROPOSAL DEADLINE

ESTIMATED VALUE, SOURCE OF VALUATION

ADDITIONAL INFORMATION

CR3 CENTRAL REGISTER - ACQUISITION OR DISPOSITION OF REAL PROPERTY

The proposed sale, rental, acquisition or disposition of public property which is 2,500 sq. ft. or more. Must be published 30 days prior to the proposal deadline.

AUTHORITY

DESCRIPTION OF PROPERTY

PROPOSAL DEADLINE

ESTIMATED VALUE, SOURCE OF VALUATION

ADDITIONAL INFORMATION

CR3 CENTRAL REGISTER - ACQUISITION OR DISPOSITION OF REAL PROPERTY

The proposed sale, rental, acquisition or disposition of public property which is 2,500 sq. ft. or more. Must be published 30 days prior to the proposal deadline.

AUTHORITY

DESCRIPTION OF PROPERTY

PROPOSAL DEADLINE

ESTIMATED VALUE, SOURCE OF VALUATION

ADDITIONAL INFORMATION

R4 CENTRAL REGISTER - CONTRACT AWARD

l contracts published in a prior issue of the Central Register.

JTHORITY
ency, municipality or district;
ntact person, address and telephone

PROJECT - Designer Services ☐
General Contract ☐

ONTRACT AWARDED TO
me and address of awardee,
additional space to include sub bids if applicable

CONTRACT AMOUNT

R4 CENTRAL REGISTER - CONTRACT AWARD

l contracts published in a prior issue of the Central Register.

JTHORITY
ency, municipality or district;
ntact person, address and telephone

PROJECT - Designer Services ☐
Contract Award ☐

ONTRACT AWARDED TO
me and address of awardee,
additional space to include sub bids if applicable

CONTRACT AMOUNT

R4 CENTRAL REGISTER - CONTRACT AWARD

l contracts published in a prior issue of the Central Register.

JTHORITY
ency, municipality or district;
ntact person, address and telephone

PROJECT - Designer Services ☐
General Contract ☐

ONTRACT AWARDED TO
me and address of awardee,
additional space to include sub bids if applicable

CONTRACT AMOUNT

CR5 CENTRAL REGISTER - PERSONS RECEIVING BIDDING DOCUMENTS

Weekly list of persons or firms receiving plans and specifications for public projects estimated to exceed $10,000.

AUTHORITY *Agency, municipality or district; person, address and telephone*	PROJECT

Unique Real Property Acquisition

This form must be submitted to the *Central Register* for publication at least 30 days prior to the execution of a binding agreement to acquire an interest in real property.

1. Public agency acquiring real property: _____
   (name of jurisdiction)

2. Complete legal description and address of real property:

3. Size of real property in square feet:

4. Type of transaction: ☐ Purchase ☐ Lease for _____
   (term)

5. Sellor(s) or Lessor(s):

6. Total purchase or rental price: $_____.

7. The above-named public agency has determined that advertising pursuant to M.G.L. c.30B, §16(d), will not benefit the interests of the public agency because of the following unique qualities or location of the real property to be acquired:

8. Names of all persons who have or will have a direct or indirect beneficial interest in the real property described above (from the disclosure required by M.G.L. c.7, §40J):

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Emergency Real Property Transaction

This form must be submitted to the *Central Register* for publication at the earliest opportunity following a determination that an emergency exists that requires shortening or waiving the advertising requirements of M.G.L. Chapter 30B for an acquisition or disposition of an interest in real property.

1. Public agency acquiring real property: _____
   (name of jurisdiction)

2. Complete legal description and address of real property:

3. Type of transaction:
   - ☐ Purchase
   - ☐ Lease for (term) _____
   - ☐ Sale

4. Total purchase, rental, or sale price: $_____.

5. Sellor(s) or Lessor(s):

   Purchaser(s) or Lessee(s):

6. The above-named public agency has determined that an emergency exists and that the time required to comply with the advertising requirements of M.G.L. c.30B, §16(d), would endanger the health or safety of people or their property. The reasons for this emergency determination are as follows:

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Disclosure of Beneficial Interests in Real Property Transaction

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c.7, §40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: _____
   [Name of jurisdiction]

2. Complete legal description of the property:

3. Type of transaction: ☐ Sale ☐ Lease or rental for _____ [term]:

4. Seller(s) or Lessor(s): _____

   Purchaser(s) or Lessee(s): _____

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need* ***not*** *be disclosed.*

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

(Continued on next page)

5. Continued

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Printed name: _____

Title: _____

Date: _____

Appendix D
Sources for Advice and Assistance

When you have a question about a particular procurement, it is often best to check first with your jurisdiction's Chief Procurement Officer or local counsel. This appendix provides information on additional sources of procurement advice and assistance.

Associations of public officials. There are numerous associations of public officials that assist their members in a variety of ways, including exchanging information on procurements. Participation in such associations will provide you an opportunity to exchange ideas and information with other practitioners in your field. Three associations have been active in developing and implementing Chapter 30B: the Massachusetts Association of Public Purchasing Officials, the Massachusetts Association of School Business Officials, and the City Solicitors and Town Counsel Association.

Interpretation and enforcement of Chapter 30B. The Office of the Inspector General accepts telephone requests for assistance with Chapter 30B on Mondays, Wednesdays and Fridays between 8:00 a.m. and 4:00 p.m. You may also mail or fax written requests. See Chapter 10 for additional information.

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
Attn: Chapter 30B Team

Telephone: (617) 727-9140
Fax: (617) 723-3540

Public building design contracts. The state Designer Selection Board establishes guidelines for municipal officials awarding public building design contracts.

Designer Selection Board
100 Cambridge Street, Room 4640
Boston, MA 02202

Telephone: (617) 727-4046
Fax: (617) 727-6060

Prevailing wages for construction projects. Prevailing wage rates for public construction contracts are set by the Department of Labor and Industries.

Department of Labor and Industries
100 Cambridge Street
Room 1107
Boston, MA 02202

Telephone: (617) 727-3492
Fax: May not request prevailing wage rates over the fax machine.

Public construction bid laws and prevailing wages law enforcement. The Attorney General's Office enforces and interprets the public construction bid laws and prevailing wage law.

Office of the Attorney General
Fair Labor and Business Practices Division
100 Cambridge Street
Room 1101
Boston, MA 02202

Telephone: (617) 727-2200
Fax: (617) 727-3251

Energy management services contracts. The Division of Energy Resources enforces and interprets the bid law for procuring energy management services contracts, and has an engineering assistance program in place to help governmental bodies evaluate their needs for energy-saving improvements.

Division of Energy Resources
100 Cambridge Street
Room 1500
Boston, MA 02202

Telephone: (617) 727-4732
Fax: (617) 727-0030

Municipal finance law. The Division of Local Services of the Department of Revenue will answer questions regarding municipal finance law.

Division of Local Services
Department of Revenue
100 Cambridge Street
Room 304 North
Boston, MA 02204

Telephone: (617) 626-2300
Fax: (617) 626-2330

Real property transaction disclosures of beneficial interests. Disclosures of beneficial interests in real property transactions must be filed with the state Division of Capital Planning and Operations. Appendix C includes a form you may complete and file with the Division.

Division of Capital Planning and Operations
One Ashburton Place, 15 Floor
Boston, MA 02108

Telephone: (617) 727-4003
Fax: (617) 727-5482

Notices in the *Central Register* and *Goods and Services Bulletin*. The Secretary of State publishes the *Central Register* and *Goods and Services Bulletin.* Appendix C contains copies of forms you may complete and submit for publication.

Secretary of State
Regulations Division
One Ashburton Place, Room 2A
Boston, MA 02108

Telephone: (617) 727-9136
Fax: (617) 742-4822

Statewide contracts. The state Department of Procurement and General Services awards a variety of statewide contracts that local officials may use without conducting a separate procurement process. Appendix B contains an illustrative list of the products available through the contracts.

Collective Purchasing Bureau
Department of Procurement and General Services
One Ashburton Place
Boston, MA 02108-1552

Telephone: (617) 727-7500
TDD: (617) 727-2716
Fax: (617) 727-4527

Appendix E
Recommended Code of Conduct for Public Employees

The Office of the Inspector General has developed the attached Code of Conduct as a supplement to M.G.L. Chapter 268A, the conflict of interest law. The Code sets standards of conduct for public employees engaged in official business relationships. We recommend that local jurisdictions adopt the Code to preserve the integrity of business relationships and to maintain the highest level of public confidence in the impartial operation of government.

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The Commonwealth of Massachusetts

Office of the Inspector General

One Ashburton Place, Boston, MA 02108

ROBERT A. CERASOLI
INSPECTOR GENERAL

JOHN W. McCORMACK
STATE OFFICE BUILDING
ROOM 1311
TEL: 727-9140
FAX 723-3540

CODE OF CONDUCT FOR PUBLIC EMPLOYEES

INTRODUCTION

The Massachusetts conflict of interest law, Chapter 268A of the Massachusetts General Laws, prohibits public employees from soliciting or accepting gratuities of substantial value for or because of their official duties. The law covers all State, county, and municipal employees, as well as employees of independent State authorities, districts, and commissions. The State Ethics Commission, which enforces the conflict of interest law, is authorized to impose civil fines of up to $2,000 for each violation of the law and to recover damages. The law also carries criminal penalties, including fines and terms of imprisonment.

The conflict of interest law encourages public agencies to establish and enforce standards of conduct. This Code of Conduct is designed to supplement the conflict of interest law by setting standards of conduct for all employees with respect to relationships with individuals and entities with whom the public sector conducts official business. The purpose of this Code is to preserve the integrity of these relationships and to maintain the highest level of public confidence in the impartial operation of government.

This Code prohibits certain activities that could result in a conflict of interest or create the appearance of a conflict of interest. Exceptions to the Code's prohibitions are limited to specific circumstances in which an overriding public interest is served by the exception or in which the relationship in question is primarily personal.

The Massachusetts Office of the Inspector General has developed this Code for use by public agencies throughout the Commonwealth. Five major areas are addressed by this Code: gifts and gratuities, reimbursement of travel expenses, honoraria, testimonial and retirement functions, and groundbreaking and dedication ceremonies. This Code is not all-inclusive. It does not regulate every conceivable situation in which a public employee may be offered gifts or other items of monetary value. It does not address other activities prohibited by the conflict of interest law, such as bribery, participation in official matters affecting one's financial interests or those of one's family or business, and misuse of one's official position. For information or advice on matters not covered by this Code, guidance may be sought from local counsel and from the State Ethics Commission. As used in this Code, "we" and "our" refer to the agency adopting this Code; "you" refers to the agency's employees or members.

revised 6/92

CODE OF CONDUCT

I. GIFTS AND GRATUITIES

A. General Restrictions

You may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other item of monetary value from a person, public agency, or private entity you know or have reason to know:

1. Has had, has, or is seeking to obtain contractual or other business or financial relations with us;

2. Conducts or is seeking to conduct business or other activities that are regulated or monitored by us; or

3. Has interests that may be or may give the reasonable impression of being substantially affected by the performance or nonperformance of your official duties.

Example: *You may not accept a restaurant lunch from a consultant employed by a firm under contract to us.*

Example: *You may not accept a Christmas gift from a vendor seeking business with us.*

Example: *You may not accept a ticket to a sporting event from an individual whose business we regulate.*

B. Exceptions

1. You may accept gifts in cases involving a family or personal relationship when the circumstances make clear that the relationship is the motivation for the gift.

2. You may accept nonalcoholic beverages, such as coffee or tea, from public or private entities.

3. You may attend and accept food and beverages at seasonal or celebratory functions, such as Christmas, birthday, or retirement parties, hosted by public entities.

4. You may accept food and beverages in connection with attendance at working meetings held in the office of a public entity.

5. You may accept food and beverages in connection with attendance at widely attended meetings or gatherings held by a private trade or professional association in an office or other business setting when you are attending the meeting or gathering in your official capacity for informational, educational, or other similar purposes.

Example: *You may accept a modest meal served in a restaurant function room in conjunction with an informational, widely attended meeting hosted by a professional association.*

Example: *You may not accept food and beverages at a hospitality suite hosted by one or more private firms.*

6. You may accept loans from banks or other financial institutions to finance proper and usual customer activities, such as home mortgage loans and automobile loans. If the bank or financial institution is an entity with which you have or might reasonably expect to have dealings in your official capacity, you must be able to demonstrate that the loan has been granted on current customary terms; you must also provide written disclosure of the loan to your supervisor. The previous sentence does not apply if your duties or anticipated duties with respect to the bank are limited to obtaining third-party records.

7. You may accept unsolicited advertising or promotional materials of nominal value.

Example: *You may accept an unsolicited, inexpensive promotional pen or calendar.*

Example: *You may not accept a leather portfolio.*

II. REIMBURSEMENT OF TRAVEL EXPENSES

A. General Restrictions

You may not accept reimbursement for travel expenses from a person or entity who falls within the scope of Section IA, above.

B. Exceptions

1. If you deliver a speech or participate in a conference, we may elect to accept reimbursement from the sponsor of the speech or conference for your actual and necessary travel expenses. In this case, we -- not the sponsor -- will pay or reimburse you in accordance with our travel policy, and bill the sponsor for the appropriate amount.

2. If we determine that employee travel is a necessary component of a vendor evaluation process, we may elect to require competing vendors to reimburse us for actual and necessary travel expenses incurred in connection with the evaluation. In this case, we -- not the vendors -- will pay or reimburse you in accordance with our travel policy. The publicly advertised request for proposals or bids must set forth our procedures for calculating and billing all competing vendors for the appropriate amounts.

III. HONORARIA

A. General Restrictions

You may not accept honoraria or other monetary compensation from an outside source in return for a public appearance, speech, lecture, publication, or discussion unless all of the following conditions are met:

1. Preparation or delivery of the public appearance, speech, lecture, publication, or discussion is not part of your official duties;

2. Neither the sponsor nor the source, if different, of the honorarium is a person or entity who falls within the scope of Section IA, above;

3. You do not use office supplies or facilities not available to the general public in the preparation or delivery of the public appearance, speech, lecture, publication, or discussion; and

4. You do not take office time for the preparation or delivery of the public appearance, speech, lecture, publication, or discussion.

Example: *You may accept an honorarium for a magazine article prepared outside working hours.*

Example: *You may not accept an honorarium for delivering a speech in your official capacity.*

B. Exceptions

1. You may accept awards, certificates, or other items of nominal value given for a speech, participation in a conference, or a public contribution or achievement.

Example: *You may accept a framed certificate of appreciation.*

Example: *You may not accept an engraved pewter bowl.*

IV. TESTIMONIAL AND RETIREMENT FUNCTIONS

A. General Restrictions[1]

1. You may not solicit contributions, sell tickets, or otherwise seek or accept payment for a testimonial or retirement function, or any function having a similar purpose, held for yourself or any other employee, if the contributor is a person or entity who falls within the scope of Section IA, above, and the admission price or payment exceeds the actual per-person cost of food and beverages served at the function.

Example: *You may not offer or sell tickets to a testimonial dinner to contractors doing business with us if the ticket price includes a contribution toward a gift.*

2. You may not accept food, beverages, or gifts at any testimonial or retirement function, or any function having a similar purpose, if such food, beverages, or gifts are paid for or subsidized by a person or entity who falls within the scope of Section IA, above.

Example: *You may not accept a free admission to a retirement luncheon if the cost of your admission is paid, directly or indirectly, by one or more contractors doing business with us.*

Example: *You may not accept a retirement gift if the gift was paid for with the proceeds of tickets purchased by contractors doing business with us.*

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[1]Chapter 268, §9A, of the Massachusetts General Laws currently prohibits anyone from selling, offering for sale, or accepting payment for tickets to, or soliciting or accepting contributions for, testimonial dinners or functions held on behalf of anyone employed by a law enforcement, regulatory, or investigatory agency of the Commonwealth or any political subdivision of the Commonwealth. The law carries a maximum fine of $500.

B. Exceptions

None.

V. GROUNDBREAKING AND DEDICATION CEREMONIES

A. General Restrictions

1. You may not request or require any person or entity who falls within the scope of Section IA, above, to sponsor or contribute to any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project. If we determine that a groundbreaking or dedication ceremony for a public works project serves a legitimate public purpose, we may elect to fund such a ceremony. We may plan and pay for the ceremony. Alternatively, we may include the ceremony-related services in the construction bid specifications for the public works project.

2. You may not accept food, beverages, or gifts at any groundbreaking ceremony, dedication ceremony, or similar occasion involving a public works project if the food, beverages, or gifts are paid for or subsidized by a person or entity who falls within the scope of Section IA, above.

B. Exceptions

None.